SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 48

TENNESSEE PUBLISHING COMPANY,
PETITIONER,

vs.

AMERICAN NATIONAL BANK, C. O. CARPENTER,
RECEIVER, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPT. 28, 1936.

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In The

United States District Court

For The Middle District of Tennessee,
Nashville Division

IN RE: TENNESSEE PUBLISHING CO., Debtor
Appellant

COURT CAPTION, MARCH TERM, 1935

Being the second Monday of March, 1935, be it remembered that at a District Court of the United States begun and held for the Nashville Division of the Middle District of Tennessee at the Federal Court Room in the City of Nashville, Tennessee, within said District, and the Sixth Circuit on the second Monday, it being the 11th day of March, 1935.

Court met pursuant to adjournment, presiding the Honorable John J. Gore, United States District Judge for the Middle District of Tennessee, when the following proceedings were had, to wit:

FILATION ORDER

(Filed June 6, 1935)

This matter came on to be heard before the Honorable John J. Gore, Judge, upon the filing of a petition by the Tennessee Publishing Company Under Section 77-B of the Bankruptcy Act, and it appearing, and the Judge being satisfied, that such petiton complies with Section 77-B of the Bankruptcy Act, being Title II, Section 207, U.S.C.A. and has been filed in good faith, it is ordered, adjudged and decreed, that said petition is hereby approved as properly filed under Section 77-B of the Bankruptcy Act.

It further appearing that the property, business and affairs of the petitioner, the debtor corporation, are now in the possession and control of Honorable L. J. Pardue, as Receiver, in the case of C. O. Carpenter, Receiver of the Holston Union Bank, vs. Tennessee Publishing Company, defendant, in Equity 546, now pending in this court, it is ordered, adjudged and decreed that the said L. J. Pardue, is ordered to keep, take and retain said property business and affairs of the petitioner, subject to the further orders of this court in the premises.

It is further ordered, adjudged and decreed that the hearing of claims filed in the aforementioned receivership suit and the exceptions filed, thereto, be proceeded with to the end and purpose that the various claims of this petitioner will be passed on by this Court, subject however, to such further orders as this Court may enter in the premises.

It is further ordered, adjudged and decreed that a rule forthwith issue against all parties to the aforesaid Receivership case, and to all creditors and stockholders in the Tennessean Publishing Company to appear and show cause, if any, as to whether or not the aforesaid petition of the Tennessee Publishing Company should be dismissed, at a hearing before the Judge of this court at the Federal Court Room, in Nashville, at 9:00 a.m. on July 6, 1935, and L. J. Pardue, Esq., in the aforesaid Receivership case as the party in possession of the business, property and effects of the alleged debtor is ordered to notify all the said parties, creditors, stockholders of the issuance of said rule and said hearing in the manner and form of a published notice thereof in the morning Nashville Tennessean, said insertion of published notice to appear at a time not less than two weeks prior to July 6, 1935, and to be gen-

erally addressed to such parties, creditors and stockholders as aforesaid.

Approved this the 6th day of June, 1935.

GORE, Judge.

O. K. as to form.

WHITE & HOWARD,
Attorneys for "Debtor" Tennessee Publishing Co.

SEAY, STOCKELL & EDWARDS,
For L. J. Pardue, Receiver.

BASS, BERRY & SIMS,
For L. J. Pardue, Receiver.

W. E. NORVELL, Jr.,
For Commerce Union Bank et al.

ORIGINAL PETITION FOR REORGANIZATION

TO THE HONORABLE JOHN J. GORE, JUDGE
OF THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE:
(Filed June 6, 1935)

The petition of Tennessee Publishing Company, a corporation (hereinafter referred to as the Debtor), under Section 77B of an act entitled "An Act to establish a uniform System of Bankruptcy throughout the United States" approved July 1st, 1898, and acts amendatory thereof and supplementary thereto (hereinafter referred to as the Bankruptcy Act) respectfully represents:

1.

The Debtor is a corporation organized and existing under the laws of the State of Tennessee and is a citizen and resi-

dent of said State, and is not a municipal, railroad, insurance, or banking corporation, nor a building and loan association, and is such a corporation that can become a bankrupt under Section 4 of the Bankruptcy Act of 1898 and Section 22, Chapter 3, Title II or the United States Code.

2.

During the six months' period immediately preceding the filing of this petition and for a number of years prior thereto, the Debtor has had, and now has, its principal place of business and its principal assets (being substantially all of its assets) in the City of Nashivlle, County of Davidson, State of Tennessee, in the territory and jurisdiction of the United States District Court for the Middle District of Tennessee; such principal place of business at present and for more than six months last passed being located at 222 Fourth Avenue, North, Nashville, Davdison County, Tennessee.

3.

The Debtor is engaged in the business of operating a newspaper and a printing establishment and now publishes and has published for a number of years a morning and evening daily paper of wide and extensive circulation in Nashville and the territory surrounding Nashville known as the Nashville Tennessean.

4.

On or about the 3rd day of March, 1933, a bill of complaint in equity entitled C. O. Carpenter, Receiver, vs. Tennessee Publishing Company, defendant, in Equity, No. 546, was filed in the United States District Court for the Middle District of Tennessee, and on or about the 3rd day of March, 1933, an order was made and entered in said cause appointing Lit Pardue Receiver of the Debtor and all of its business assets and property. Such equity receivership is now pending in said United States District Court for the Middle District of Tennessee.

5

The principal part of the assets of the debtor consists of its printing presses, stock of supplies, and accounts receivable, and more especially of the good-will and value attached to its circulation. A full and detailed description of said assets has been filed in this Honorable Court in the cause of C. O.

Carpenter, Receiver, vs. Tennessee Publishing Company, supra, and for a full description of the same reference is hereto made. Substantially all of the assets of the Debtor are subject to a certain first mortgage on the property of the Debtor in the sum of $750,000.00. There are certain other assets of the Debtor, the exact amount and character of which would have to be determined by order of this Honorable Court, which might not pass under said mortgage and deed of trust. A list of the machinery, equipment and physical properties of said debtor is hereto attached as Exhibit No. 1, but is not to be copied.

6.

A brief description of the liabilities of the Debtor is:

(a) The $750,000.00 of first mortgage bonds outstanding, which said bonds have several years' accrued interest coupons attached hereto; and

(b) Open accounts in the approximate sum of $750,000.00, which said open accounts are wholly unsecured and claim for a number of which have been filed in the Receiver's cause in this Court.

An itemized list of the liabilities of the debtor can be found in the reports of the Special Master on file in the case of C. O. Carpenter, Receiver vs. Tennessee Publishing Company, now pending in this Court to which reference is hereby made.

7.

The authorized capital stock of the Debtor consists of 3,000 shares of the par value of $100.00 each of preferred capital stock, and 3,000 shares of the par value of $100.00 each of common capital stock. The entire amount of said authorized capital stock is issued and outstanding. The stock books are in the hands of the Receiver and/or his attorneys. The Debtor would show that of the total amount of the common capital stock outstanding 2995 shares belonged to the president of the corporation, Edward W. Carmack, same being all of the common capital stock of the corporation except five shares.

8.

The Debtor would show that default has been made in payment of said $750,000.00 of first mortgage bonds outstanding against its property and that the Receiver has not paid the interest on said bonds, and that it appears a sale of the property of the Debtor may be ordered in said receivership pro-

ceedings at an early date. The Debtor would show that it believes, and has sound basis for said belief, that a sale of the property of the Debtor at the present time and under present conditions could be made only at a great sacrifice and would be to the great injury and detriment of all classes of creditors and to the stockholders of the Debtor and would mean the corporate death of the Debtor.

9.

The Debtor is unable to meet its debts as they mature and the Debtor requires relief under Section 77B of the Bankruptcy Act by reason of the fact that the assets formerly held by the Debtor and now in the possession of its Receiver are of substantial value and that such assets, when administered as a going concern with the good-will connected therewith, have an earning power which should be preserved by proceedings for reorganization of the Debtor under Section 77B of the Bankruptcy Act. Such reorganization would be for the benefit of the creditors and other interested parties, whereas, if said assets are liquidated, their value will be greatly diminished, all of which is particularly true in the case of a newspaper, which is the business operated by this Debtor.

10.

The Debtor would show that, as above set out, the assets belonging to Debtor are now in the hands of a Receiver who is operating said plant and is continuing to publish the daily Tennessean under orders of this Court in another cause, and the Debtor has been advised and believes that an application has been made in said cause by one or more of the secured creditors asking that the assets and properties belonging to the debtor be sold in said cause, and that it is probable that at the instance of such creditor or creditors this Court might grant said petition and direct the sale of said properties in the imediate future.

The Debtor would show that its President, Edward W. Carmack, is at the present time in negotiation with numerous of the creditors of both classes; that he owns a portion of the preferred stock and substantially all of the common stock of the Tennessee Publishing Company, and is therefore vitally interested in seeing the debtor work out a plan whereby a reorganization of the corporation may be effected, and whereby not only the secured creditors, but also the common creditors, may realize substantial amounts upon their indebtedness. The Debtor believes that if the properties and assets of the corporation were sold in the immediate future in the Receiver-

ship cause it is highly probable that the properties and assets would be sold at a great sacrifice, and that the unsecured creditors would not realize anything for their debts, and probably a small group of the bondholders would obtain possession of the properties by bidding in same at a price much lower than the present value thereof.

The Debtor would further show that the President, Edward W. Carmack, has reasonable assurance of outside financial support wherein and whereby, if the Debtor is granted the relief under Section 77B of the Bankruptcy Act, it will be able to effect a reorganization thereunder, to the great benefit of its creditors and other interested parties.

The Debtor is adised and believes that this Court, acting under the broad authority and power granted by Section 77B of the Bankruptcy Act, may consider and, if deemed advisable, approve reorganization plans of the Debtor corporation, which would be advantageous to all classes of creditors and to the stockholders of the Debtor, and which plan of reorganization would not be possible under the equity receivership case.

The Debtor is further advised and believes that the rights and benefits made available to it by said Section 77B of the Bankruptcy Act constitute additional and different relief, which this Debtor is now entitled to seek, and that upon the facts set out herein this Court will accord to the Debtor the benefits of such Act, and will permit it to seek and take advantage thereof.

11.

The filing by the Debtor of this petition has been duly authorized by resolution of the Board of Directors of the Debtor, adopted at a meeting thereof duly held on the 5th day of June, 1935.

12.

WHEREFORE, the Debtor prays that this Honorable Court shall enter an order approving this petition as properly filed under Section 77B of Chapter VIII of the Acts of Congress relating to bankruptcy and that the Debtor may be granted such other and further relief as to this Court may seem just and equitable.

TENNESSEE PUBLISHING COMPANY,
By EDWARD W. CARMACK, President.

WHITE & HOWARD,
Attorneys.

UNITED STATES OF AMERICA,
MIDDLE DISTRICT OF TENNESSEE,
STATE OF TENNESSEE,
COUNTY OF DAVIDSON.

Edward W. Carmack, being duly sworn, makes oath that he is the president of the petitioning Debtor mentioned and described in the foregoing petition and he makes solemn oath that the statements contained therein are true according to the best of his knowledge, information, and belief.

EDWARD W. CARMACK.

Sworn to and subscribed before me, Grace Dawson, a Notary Public in and for said State and County aforesaid at office at Nashville, Tennessee, this 5th day of June, 1935.

(SEAL)

GRACE DAWSON,
Notary Public.
My Commission expires Oct. 15/35.

Exhibit No. 1 To Original Petition

PRESSES:

One (1) 64 page Octuple Newspaper Web Perfecting printing press serial No. o.12591, with one (1) Hoe High Speed Internal Gear Double Former Folder with transverse collecting arrangement, and two (2) half page deliverers.

One (1) Hoe 4 deck 32 page single width straight line press No. 929 with folder.

STEREOTYPE:

One five ton metal pot with agitator and motor
One one ton " " " " " "
One Hoe 14½ inch diameter curved plate.
Finishing, cooling and drying machine, serial No. 0.14022, equipped with motor suitable for 220 volts 3 phase, 60 cycle, alternating current.
One Hoe 14½" diameter curved plate, finishing, cooling and drying machine No. 70, equipped with motor suitable for 220 volts 3 phase, 60 cycle, alternating current.
One Hoe 14½" Due cooled Equipoise Curved Casting Mould, Serial No. 2081 complete with side and head gauges and metal pump.
One curve Roaster. One Hoe 14½" diameter Equipoise Curved Casting Mould with gauges.
One curve Router, with metal pump.
Two Finishing Blocks.
One Matrix Trimmer
One Tail Cutter and Shaver
One Saw and Trimmer
One Jig Saw and Drill
One flat Shaver
One 7 Column Casting Box, flat
One Air Compressor and two storage tanks.
One Matrix Moulding Machine No. 634.
One Coke Boiler.
One Gas boiler.
One two pocket drying table.
One wood Humidor.
One flat Roaster

COMPOSING:

Thirteen Mergenthaler Linotype Machines.

One Model	K.	Serial Number	1497,	2	magazines
" "	K.	" "	1503,	2	magazines
" "	K.	" "	1600	"	"
" "	K.	" "	1506	"	"
" "	K.	" "	1504	"	"
" "	K.	" "	1502	"	"
" "	K.	" "	1501	"	"
" "	K.	" "	1499	"	"
One Model	9	Serial Number	19578	4	Magazines
" "	9	" "	20376	4	"
" "	9	" "	19581	4	"
" "	8	" "	41034	3	"
" "	8	" "	41033	3	"

One Monotype Type Caster Series S 8293

Exhibit No. 1 To Original Petition

One Monotype Material Caster No. 8212
One Miller Metal Saw No. 1283
One Miller Metal Saw No. U5399
One Proof Press 3-57.

ENGRAVING:

One Royal Router
One Axel Holmtrom Bath Mach. Series 1925.
One Morgans Proof Press
One Ostrander Seymour Saw and Trimmer
One Engraving Printing Frame
One Levy Process Camera No. A2952, with Cooke lens No. 122737.
One Cooke prism.
One Levy 55 line screen
One economic 65 line screen
One Ostrander Seymour burning in furnace.
One Pyro silver bath.

GENERAL:

One Automatic Color Job Press
One Regular Job Press.

CIRCULATION:

One Rapid Addressing Machine, Model "2", Serial 2091, Style K.
One Rapid Addressing Co. Addressograph Model 1, Serial 2078, Style D.

All other machinery, equipment, office furniture, typewriters, automobiles, trucks, mailing machines, files, records, books, library, rights, franchises, easements, good will, subscription lists, contracts for advertising, press franchises and other personal property used in publication of Nashville Tennessean, all of aforesaid tangible property, except motor vehicles being located at 222 4th Ave. N., including right, title and interest which the Publishing Co., has in, and to membership in Asso. Press now in name of Luke Lea, Jr., used in publishing of Nashville—Tennessean.

ORDER OF PUBLICATION

(Filed June 21, 1935)

In this cause, it is ordered, adjudged and decreed as follows:—

1. Debtor is granted leave to file its Petition making application to be restored to the possession of its property.

2. The hearing of said Petition and application of debtor to be restored to the possession of its property is set before the Judge of this Court, at the Federal Courtroom, in Cookeville, Tennessee, at 10 o'clock A.M., on July 5, 1935.

3. The Debtor will forthwith cause publication of the notice of said hearing of the application of debtor to have its property restored to its possesion, to be made in the Evening Nashville Tennessean, the first insertion to appear on Saturday, June 22, 1935, and the second insertion, on Saturday of the week following, to-wit: June 29, 1935, said notice to be generally addressed to all parties, creditors, stockholders and persons holding interests and/or claims against debtor and/or its properties and in addition debtor shall, on or before Wednesday, June 26th, 1935, mail in the Post Office at Nashville, Tenn., copies of such notice addressed to creditors and attorneys of record in the cause of C O. Carpenter, Receiver, vs. Tennessee Publishing Co. pending in this court and also to the Stockholders of debtor.

Dated, this 21st day of June, 1935.

JOHN J. GORE, District Judge.

PETITION OF DEBTOR TO BE RESTORED TO POSSESSION

(Filed June 22, 1935)

The PETITION of the TENNESSEE PUBLISHING COMPANY, a corporation, hereinafter referred to as "Debtor", respectfully represents:

Petition Of Debtor To Be Restored To Possession

1. That its Petition under section 77-B of an Act entitled - An Act to establish a Uniform System of Bankruptcy throughout the United States approved July 1, 1898, and Acts amendatory thereof, and subsequently thereto, - was filed herein on June 6, 1935, and was, by decree of the Court, on the same day approved to be filed.

2. Debtor is advised it is necessary for its application, to be restored to possession of its properties, to be filed within thirty (30) days from the date of the approval of its Petition. And that in addition, it is necessary that a hearing upon its said application shall be set, likewise, within thirty (30) days from said date of approval, and that notice of said hearing, by publication for two (2) successive weeks, must be made.

3. Debtor hereby makes application to the Court for the return of its property to its possession, all in conformity with said section 77-B of said Bankruptcy Act and amendatory Acts.

PREMISES CONSIDERED, DEBTOR PRAYS:

That this Honorable Court, by proper Order, cause publication to be made, as required by Section 77-B of the Bankruptcy Act, the Bankruptcy Act of 1898, and Amendatory Acts, to the end that a hearing may be had upon its application to be restored to possession of its properties, and that such hearing be set within thirty (30) days from the date of the approval of the filing of its Petition herein.

Debtor prays that upon said hearing, all of its properties be restored to its possesion, with full authority to continue the operation of said properties, as officer of the Court, and subject at all times to the orders of the Court.

Debtor prays for all such orders and decrees as may be necessary in the premises.

TENNESSEE PUBLISHING COMPANY,

By EDWARD W. CARMACK, President.

Petition Of Debtor To Be Restored To Possession

Order Of Continuance

WHITE & HOWARD,
By Jordan Stokes, Jr.

JORDAN STOKES, Jr.,
Attorneys for Debtor.

UNITED STATES OF AMERICA
MIDDLE DISTRICT OF TENNESSEE

STATE OF TENNESSEE
COUNTY OF DAVIDSON

Edward W. Carmack, being duly sworn, makes oath that he is President of the debtor corporation, and that the statements contained in the foregoing petition are true, acocrding to the best of his knowledge, information and belief.

EDWARD W. CARMACK.

Subscribed and swotn to before me,
This, 21st day of June, 1935.

(SEAL)

ALINE J. SWAIN,
Notary Public.

My Commission Expires Feb. 8, 1938

ORDER OF CONTINUANCE

(Filed June 27, 1935)

This cause came on to be heard on July 5, 1935, before the Honorable John J. Gore, Judge, upon the petition of the Tennessee Publishing Company, the debtor, filed June 21, 1935, asking return of its property to its possession, etc. and thereupon, at the suggestion of the Court, on account of other engagements, etc., it is ordered, adjudged and decreed that the hearing be, and the same hereby is, adjourned until eleven o'clock A. M. Saturday, July 13, 1935, at Monteagle, Tennes-

see, there to be resumed at Chambers at the Assembly Inn, and all of this without prejudice to the rights of any party.

ENTER:

GORE, Judge.

APPROVED AS TO FORM:
JORDAN STOKES, Jr.,
WHITE & HOWARD,
By J. W. Stokes,
Attorneys for Debtor.

SEAY, STOCKELL & EDWARDS,
BASS, BERRY & SIMS,
Attorneys for Lit J. Pardue, Receiver of Tennessee Publishing Company.

W. E. NORVELL, Jr.,
Attorney for Commerce Union Bank, et al.

ORDER OF CONTINUANCE

(Filed June 26, 1935)

In this cause the hearing heretofore set at 9:00 o'clock A. M. on July 6, 1935, upon the order to show cause as to whether or not the petition of Tennessee Publishing Company should be dismissed, for satisfactory reasons is continued and said hearing is set for 11:00 o'clock A. M. on July 13, 1935, at Monteagle, Tennessee.

Aproved, this 26th day of June, 1935.

GORE, Judge.

LAURENCE B. HOWARD,
Attorneys for Debtor.

BASS, BERRY & SIMS,
SEAY, STOCKELL & EDWARDS,
Attorneys for L. J. Pardue, Recvr.

W. E. NORVELL, Jr.,
Attorney for Commerce Union Bank.

ORDER ALLOWING DEBTOR ACCESS TO ITS RECORDS

(Filed July 5, 1935)

In this cause, upon application of debtor, it is ordered, adjudged and decreed, as follows:

1. Debtor be given access to all of the books, records, payrolls, documents, and any and all data and information with reference to the affairs of debtor and L. J. Pardue, Receiver, both prior to the receivership and subsequent thereto, that are in the possession of the Receiver, or under his dominion and control, provided any examination of such record shall be in the place of business of the Receiver.

That the Receiver is ordered and directed to give access to, and the right of inspection of, all of said records, documents, payrolls and information in his possession, to the debtor, its officers, attorneys and agents; provided only, that debtor shall not unduly inconvenience and interfere with the orderly operation of the business being conducted by the Receiver, and that such inspection and examination shall be conducted at reasonable hours.

2. Debtor's officers shall have the right to make stock transfers on the stock books leaving, however, the certificates from which transfers are made and taking the certificates issued therefor.

3. It is further ordered that the Receiver shall not allow at any time any property, record, paper or document to be taken or removed out of the Receiver's custody or control, but any party entitled may examine the same at the office or place of business of the Receiver.

Dated this, the 5th day of July, 1935.

GORE, District Judge.

O. K. for Entry:

WHITE & HOWARD,
JORDAN STOKES, Jr.,
Solicitors for Debtor.

ED T. SEAY,
For L. J. Pardue, Receiver.

ANSWER OF C. O. CARPENTER, RECEIVER OF THE HOLSTON-UNION NATIONAL BANK

(Filed July 10, 1933)

C. O. Carpenter, Receiver of the Holston-Union National Bank, of Knoxville, Tennessee, by appointment of the Comptroller of the Currency of the United States, says that Tennessee Publishing Company is indebted to him in the amount of $67,723.21, and that before the filing of the bill against the Tennessee Publishing Company referred to in the petition filed herein there was pledged to secure said indebtedness certain bonds, among which were $28,000 par value of the First Mortgage bonds of Tennessee Publishing Company, all of which were greatly insufficient to pay the said indebtedness, and that Tennessee Publishing Company is further indebted to him in the principal amount of $37,500, which is not secured but is a general claim against Tennessee Publishing Company; and said C. O. Carpenter, Receiver of the Holston-Union National Bank, considering that he has been made a defendant to the petition filed herein by (a) the averments thereof, (b) the order heretofore entered herein directing him and all other creditors and stockholders of the Tennessee Publishing Company to appear and show cause, if any there be, why said petition should be dismissed; and (c) by the notice heretofore published in accordance with the provisions of said order, for answer to said petition says:-

I

The filing of said petition was not duly authorized by the Tennessee Publishing Company.

II

Said petition is not filed by the Tennessee Publishing Company acting through a duly authorized officer thereof. It is denied that Edward W. Carmack is the President of the Tennessee Publishing Company.

III

It is shown to the Court that the Act of Congress under which said petition is filed provides that the petition filed herein can be approved only by this Honorable Court in the event the Court is satisfied that the petition has been filed in good faith. It is averred that this petition has not been filed in good faith for the reasons that:

(a) There is a trust deed upon all of the property of the debtor, Tennessee Publishing Company, which under the law

can be mortgaged, to secure an issue of bonds in the amount of $750,000, long in default. The general claims against Tennessee Publishing Company, as reported by the Standing Master in the proceeding referred to, aggregate the amount of $391,069.76, the bonded indebtedness amounts to $750,000, and other secured claims total $138,186.55. These facts appear in the record in this case by reference made thereto in said petition. The assets of the debtor which are unencumbered by said trust deed are of an insignificant value as compared with the amount of general claims. There is no possible equity in the mortgaged property for general creditors. The total saleable value of all the property of the defendant will not exceed $300,000. The debtor is without working capital. It owns no building. It leases the building, which is wholly inadequate for the purpose of operating a newspaper therein. The offices of its managers are of necessity located in another building. Its printing presses are in a bad state of repair and are inadequate for the purposes for which they are used. Prior to the filing of the receivership proceeding it annually lost large sums of money and its earnings in the hands of a Receiver indicate that the debtor cannot be reorganized. It accordingly appears that there is no reasonable probability that a reorganization will be effected. In other words, there can be no feasible and practical plan of reorganization presented. Therefore, there is no occasion to invoke the benefits of the Act.

(b) The petitioner does not set forth a plan of reorganization and the clear inference to be drawn from the petition taken in connection with the assets and liabilities of the debtor (which are disclosed in the record in the receivership case to which reference is made in the petition) is that no plan of reorganization will be forthcoming by petitioner.

(c) While it is denied that Edward W. Carmack owns all but five shares of the common stock of the debtor, and that he owns any portion of the preferred stock, it is here averred that even if said individual is the owner of all or any part of said stock, that he acquired it as a part of a scheme to bring about the filing of the petition herein. The acquirement by him of said stock was for the sole purpose, and no other, to attain the filing of said petition.

(d) At the time of the filing of the proceeding, on March 3, 1933, referred to in the petition, of C. O. Carpenter, Receiver, vs. Tennessee Publishing Company, the Tennessee Publishing Company was being operated by Luke Lea and Luke Lea,

Jr. They were not operating it in good faith for the benefit of creditors. Its printing presses and machinery had been allowed to greatly deteriorate in value. In fact, the condition was such that it was dangerous to operate one of the presses. The claims against creditors for advertising to be done in the future had been assigned. It was with difficulty that they were able to get sufficient supply of printing paper to fulfill the needs of the corporation from day to day. The paper was being published to suit the political aims and purposes of the two gentlemen mentioned and without regard to the rights of its creditors. The petition herein was filed not in good faith for the benefit of the creditors of the debtor but to the end that Luke Lea and Luke Lea, Jr., may again get control of the paper and to again operate it to suit their own aims and purposes and without regard for their creditors. The said Edward W. Carmack is but an instrumentality of Luke Lea and Luke Lea, Jr. The stock of Tennessee Publishing Company is utterly worthless. It has no value. If it were acquired by Edward W. Carmack, he paid nothing therefor but is holding it merely as an agent for Luke Lea and Luke Lea, Jr.

(e) The insolvency proceeding of C. O. Carpenter, Receiver, vs. Tennessee Publishing Company has proceeded too far to admit of a reorganization of the debtor.

It is denied that the President, Edward W. Carmack, has reasonable assurance of outside financial support whereby he will be able to effect a reorganization of the debtor. Luke Lea and Luke Lea, Jr., who, through the said Carmack, are attempting to be placed in possession of this property, ran the debts of the Tennessee Publishing Company up to the amount aforesaid of $1,279,256.31, and accordingly the averments in the petition that someone would advance a sum of money which would enable a reorganization of a company in such a desperate plight could not be true, is unworthy of belief and is denied.

IV

There is no possibility of two-thirds in amount of the claims of bondholders accepting any plan of reorganization, for the reason that to do so would merely result in their giving up something which they already have to general creditors.

Respondent prays the Court that a hearing be had in open

Court upon the date heretofore set to try the issues made up by said petition and this answer thereto.

C. O. CARPENTER,
Receiver of the Holston-Union Nationl Bank, of Knoxville, Tennessee.

FOWLER & FOWLER,
Solicitors.

STATE OF TENNESSEE
COUNTY OF KNOX

Personally came C. O. CARPENTER, who being duly sworn, says that he is Receiver of the Holston-Union National Bank, of Knoxville, Tennessee, by appointment of the Comptroller of the Currency of the United States, and that the facts stated in the foregoing answer are true to the best of his knowledge, informaion and belief.

C. O. CARPENTER.

Subscribed and sworn to before me this 8th day of July, 1935.

My commission expires on the 23rd day of April, 1938.

(SEAL)

CLIFTON S. FOSTER,
Notary Public.
July 9, 1935.

HGF:W
Encl.

ANSWER OF AMERICAN NATIONAL BANK, A CREDITOR, AND MOTION TO DISMISS PETITION, ON ORDER TO SHOW CAUSE

(Filed July 12, 1935)

Comes American National Bank of Nashville, a creditor, and in response to the order to show cause heretofore entered on June 6, 1935, says:

I

American National Bank is the lawful owner and holder of

bonds Nos. 326-350; 376-500; 626-660; 666-690, all inclusive, issued by debtor, together with coupons for interest thereon, maturing May 1, 1933, and all semi-annual interest coupons maturing since that date, which bonds aggregate the principal amount of $210,000.00, and the past due interest as of May 1, 1935, being $29,575.00.

Said bonds are a part of the series of bonds issued by debtor November 1, 1928, and secured by a first mortgage deed of trust, recorded in Book 708, page 69, in the Register's Office of Davidson County, Tennessee, the total principal amount of said bonds now outstanding, inclusive of those above mentioned, being $750,000.00, on which the debtor has been in complete default in semi-annual interest coupons since May 1, 1933. The total due and unpaid on said bonds, principal and interest as of July 1, 1935, is $879,375.00. Said first mortgage deed of trust executed to secure the aforesaid bonds covers all of the properties of the debtor of every kind whatsoever, exclusive only of materials, supplies, merchandise consumable in the usual course of business, shares of stock, securities, cash, claims, book accounts or bills or notes receivable. There are no assets of the excluded class, except a small amount of materials consumable in use, such as printing ink and newsprint paper, the cash on hand held by the Receiver, and the accounts and bills receivable.

The remaining bonds in said issue, together with matured and unpaid interest coupons thereon are owned and held as follows:

NAME	PRINCIPAL
W. G. Bush & Company Nashville, Tennessee	$115,000
Canal Bank & Trust Company, New Orleans, La.	250,000
O. H. Ingram, Nashville, Tennessee	60,000
C. O. Carpenter, Reeciver Holston Union National Bank, Knoxville, Tenn.	28,000
Commerce Union Bank, Nashville, Tenn.	64,000
Broadway Discount Corporation, Nashville, Tennessee.	23,000

Because of the various defaults in the payment of interest, defaults in failing to provide sinking fund deposits totaling not less than $100,000.00 by February 28, 1934, and on account of various other defaults, as provided under the terms and provisions of the deed of trust executed by the debtor to secure the said bonds, all of said bonds have become due and

payable, and the total principal amount due thereunder, together with accrued interest, aggregating $879,375.00 constitutes a first and prior lien upon all of the assets of the debtor, excepting only cash on hand, bills and accounts receivable, and merchandise consumable in use.

II

On March 3, 1933, C. O. Carpenter, Receiver of the Holston Union National Bank of Knoxville, Tennessee, filed a bill in equity against the debtor in this court, which bill was duly sworn to and alleged in substance, as follows:

(a) That debtor owed plaintiff approximately $100,000.00, to secure which plaintiff held $28,000.00 of the aforementioned bonds along with certain other collateral, and said indebtedness was past due and unpaid.

(b) That the total liabilities of the debtor, including claims of all classes, was approximately $1,500,000.00, and fair value of the debtor's physical assets was approximately $337,000.00, and that the debtor was hopelessly insolvent.

(c) That the debtor had operated continuously from the year 1929 to the filing of the bill at a tremendous loss, as follows:

1929 Net operating Loss - - - -	$ 18,779.79
1930 Net Operating Loss - - - -	125,977.00
1931 Net Operating Loss - - - -	133,900.34
1932 Net Operating Loss - - - -	83,750.82

(d) That the affairs of the debtor had reached such a critical state that the total gross income from all sources was less than the operating expenses. The debtor was faced with additional monthly deficits and that it was unable to pay the salaries and wages due its employees, and had issued checks to its employees for salaries and wages which the bank had declined to pay because of insufficient funds.

(e) The debtor had no supply of newsprint paper other than that which it purchased daily from a local warehouse, and that the situation was so acute that the debtor would very shortly be unable to purchase the necessary newsprint paper in order to publish its daily morning and afternoon editions; that the debtor was delinquent in the payment of various taxes, and distress warrants had been issued and were in the hands of officers to be levied upon the debtor's assets; that the debtor had permitted its President, Vice President and

General Manager to withdraw large sums of money from its assets, and that the individuals occupying these positions had recently been tried and convicted, and were then sentenced to serve a term in the penitentiary in the State of North Carolina; and that said individuals who were the controlling spirits and owners of the common stock of the debtor had deported from their usual place of residence in Nashville, Davidson County, Tennessee, and had taken up residence in Montgomery County, Tennessee, and had to all practical purposes abandoned the affairs of the debtor corporation, which in the meantime had drifted into a hopeless financial condition with no hope of any financial rehabilitation from any source whatsoever, and its demise was only a matter of a few dys.

(f) That the debtor during this period had permitted its machinery, equipment and presses to become in a bad state of repair, had failed to make the usual replacements required by the normal operations of the business, and was able to print its daily editions only with the greatest of difficulties.

(g) That as result of the foregoing situation and the neglect by the debtor of its corporate affairs, the circulation of the newspapers had dropped from 96,221 to 80,256, or a net loss in circulation over a two year period of approximately 16.00

Respondent here and now avers that each and every one of the foregoing allegations were true in substance and in fact, and because of such facts, all of which were occasioned by the debtor, the Honorable Lit J. Pardue was duly appointed by this court in said equity cause as Receiver on the filing of the bill towit March 3, 1933, and from and after said date the said Lit J. Pardue has had complete control of the operations of the affairs of the debtor, acting under the guidance and instruction of the court.

III

On May 8, 1933, debtor filed an answer to the foregoing bill denying some of the allegations therein, but failed to deny complete and total insolvency, and thereafter on May 18, 1933, the plaintiff in said cause filed a motion to sustain the bill as a general creditors' bill, and thereupon after notice to the debtor and without any objection or protest on its part, on June 3, 1933, the court sustained said bill as a general creditors' bill, judicially declared the debtor to be insolvent, and ordered a reference to Byrd Douglass, Esq., Standing Master, to take proof and report upon the claims and priorities of all creditors whose claims were filed in the cause within the

time provided by the decree, which required such claims to be filed by December 15, 1933. Respondent further shows that claims were filed pursuant to said order by a large number of creditors, aggregating approximately $1,500,000.00, including the claims of the bondholders hereinabove set out, and also the claims of the various unsecured creditors.

Defense was made by the Receiver with respect to a large number of the claims. Thereupon hearings were had by the Standing Master lasting over a period of several months, the testimony on said hearings, not including exhibits, comprising a large volume of several hundred pages. Briefs were prepared by a large number of attorneys representing various claimants and adversary parties, and oral hearings and arguments were had before the Master, as a result of which the Master filed a report on March 20, 1935, passing upon each and every claim filed against the debtor. In said report the Standing Master reported and allowed the claims of the various bondholders as hereinbefore set out, including the cailm of this respondent, and further reported said bonds to be secured under the deed of trust by a first lien against all of the assets of the debtor of every character whatsoever, excepting only the assets expressly excluded under the terms of the deed of trust, being, insofar as material to this controversy, the cash on hand, accounts receivable and personal property consumable in use. No exceptions were filed to the report of the Standing Master with respect to the allowance of the claims of bondholders or the fixing of the lien on the deed of trust to secure said bonds, and the time for filing such exceptions has expired, and the report of the Master, therefore, in legal effect is a final adjudication of the rights and property of the bondholders.

The Master's report allowed one claim as preferred towit: Claim of $8,000.00, asserted by Mrs. Percy Warner, growing out of the alleged assignment of the debtor's advertising contracts with Lebeck Bros. and Castner-Knott Dry Goods Company, both of Nashville, Tennessee. The Receiver duly excepted to the alowance of said claim as a preferred claim. Briefs were filed in support of the exceptions and a reply thereto by claimant. An oral argument has been had and this question is now being considered by the court. Exceptions were filed to other general claims and practically all of said exceptions have been orally argued, briefs filed and are now being considered by the court.

By proper proceedings and on motion of the plaintiff in the foregoing receivership cause, a hearing was ordered and held

on June 6, 1935, for the purpose of acting upon exceptions of the Master's report, and to order a sale of the properties so as to terminate the receivership.

Respondent shows that the debtor had notice of each and every step taken in the equity proceedings, and although the amendment to the Bankruptcy Act, known as Section 77-B, was enacted and became effective on June 7, 1934, the debtor has stood by for an entire year and permitted the equity proceedings to be carried to the point of practically a complete liquidation, the only further step being to order a sale of the properties of the debtor and to fix and satisfy the expenses of the Receivership. Respondent is informed and avers that at no time during the progress of the entire litigation has the debtor manifested the slightest activity with respect to a reorganizaion of the corporate affairs for the manifest reason that upon a fair appraisal of the property covered by the bonds it is well known, and has always been recognized by the debtor, as well as the other parties in interest, that such property will be totally insufficient to cover the principal amount due on the bonds, and that the remaining assets, not covered by the bond mortgage and now held by the Receiver, will be substantially consumed in the payment of the Receiver's obligations to banks and the expenses of the receivership, so that little if any funds will be available for common or unsecured creditors. The inability of the debtor to effect a reorganization under such circumstances is further apparent in view of the fact that it has outstanding $300,000 of preferred stock, and common stock of the par value of $300,000.

Respondent avers that under these circumstances where the receivership was precipitated and caused by the debtor's own gross neglect, defaults and inability to operate its affairs, and where it is now manifest to all of the real parties in interest that by reason of all of the facts herein recited, the assets have been so dissipated and mismanaged by the debtor that they will not be sufficient to pay the principal due on the bonds, and only a small amount if anything will be available for unsecured creditors, and where the debtor has stood by for a year and permitted the corporate affairs to be practically liquidated through an equity receivership, without coming forward with any plan, or any suggestion of a possibility of reorganization, its petition should now be dismissed by this court as not being filed in good faith as required by the Statute.

In this connection respondent avers that if the debtor's petition should now be sustained all of the work and expense

incident to the receivership will be set aside, and it will become necessary for claimants of every character to again be notified to appear and file claims, and this court will be required to hear the testimony with respect to each claim, and to adjudicate such claims denovo, which according to respondent's experience in the equity cause will take a period of approximately one year at a minimum.

Respondent avers that under these circumstances, and under the manifest impossibility of any reorganization, this court should not permit the petition to stand and should dismiss the same peremptorily for lack of good faith.

IV

Respondent further shows that upon the appointment of Lit J. Pardue as Receiver, on March 3, 1933, it was found that the debtor's working capital had been entirely dissipated, and as before stated, employees held the debtor's checks aggregating approximately $14,000.00, payment on which had been refused by the banks, and the debtor had permitted its plant to become in such state of disrepair that it was dangerous for the employees to operate the presses. Because of this situation it was necessary for the Receiver to immediately obtain a line of credit so as to borrow money at the banks, and the Receiver has from time to time borrowed sums of money which were used in connection with the operation of the business, the necessary repairs and replacement of machinery, and in part to take up the bad checks given by the debtor to its employees prior to the receivership. By arduous attention to the affairs of the business the Receiver has been able to surmount many of the difficulties directly due to the wrongful acts and defaults of the debtor, and has improved the circulation of the newspapers, but nevertheless respondent is informed and avers that the receivership during the calendar year 1933 operated at a loss of approximately $10,000.00, or if the accrued interest on the bonds were included, at a loss of $55,323.39. By the most careful attention to the business, as compared with the dereliction, misconduct and defaults of the debtor, respondent is informed and avers that the Receiver was unable to make operating expenses during the calendar year 1934, the net operating result being a loss of approximately $10,000.00, and if interest due bondholders were included, a net loss of $51,107.51.

The Receiver, as of July 3, 1935, owes the bank the sum of $28,328.62, and has on deposit less than $1,000.00. There is no working capital left in the business and the Receiver is

absolutely dependent upon his monthly income to take care of his monthly operating expenses. In addition to these facts, during the months of July, August and September newspaper advertising is always at its lowest ebb, these months being recognized in the business as being the lean months. It is, therefore, manifest that it is highly important that the properties be disposed of at a speedy sale, and unless this is done respondent avers that the value of the assets will be further depreciated, and any further postponement of such sale by entertaining the debtor's petition or otherwise will be greatly detrimental and might be disastrous to the creditors. Certainly it would eliminate any possibility of general or unsecured creditors receiving anything on their claims.

V

Respondent avers that the debtor has no assets of any character, except those in the hands of the Receiver; that it has absolutely no financial responsibility or credit standing, and has no working capital, and that it is well recognized by all parties in interest that the debtor has not the remotest possibility of obtaining any financial assistance of any character whatsoever, nor is there the slightest chance of it ever being able to successfully reorganize its corporate affairs. Your respondent has been actively engaged, in cooperation with other bondholders, in formulating plans to secure a purchaser of the debtor's properties with the hope of salvaging some part of its first mortgage indebtedness held by them, and in this connection your respondent has had the properties valued and appraised by competent experts, and has been in touch with responsible persons interested in acquiring said properties. All of said parties have been unanimously of the opinion that the entire properties were not reasonably worth more than the principal due on the bonds. Your respondent avers that under these facts the debtor could not be acting in good faith in proposing a reorganization, as such reorganization is not reasonably possible, but is in fact absolutely impossible. Added to this situation is the well recognized fact that the plant and equipment of the debtor is so antiquated that there is an immediate necessity for the expenditure of approximately $100,000.00 for the purchase of new presses and other equipment, plus an additional sum sufficient for adequate working capital.

VI

The petition filed by the debtor recites that its President, Edward W. Carmack, is at the present time in negotiation

with numerous of the creditors of both classes, and that he owns a portion of the preferred stock and substantially all of the common stock of the debtor. Respondent denies each and every one of these allegations, and avers that the said Edward W. Carmack at the time of the filing of the petition was not the duly elected President of the debtor, nor did he own a single share of either preferred or common stock in said corporation. Respondent avers that the books and records of the debtor failed to show the said Carmack was the owner of either preferred or common stock, and that practically all of the common stock appears of record to be owned by Col. Luke Lea, and respondent is informed and upon information avers that the said Carmack has no financial or other interest in said stock, and that the same was delivered to him by the said Luke Lea on or before June 5, 1935, the day before the debtor's petition was filed, for the sole purpose of permitting him to file the petition, in order to deprive the bondholders of their right to an immediate sale of the properties. Respondent is advised that no meeting of the stockholders was called or held prior to the filing of the debtor's petition, and that at the time the petition was filed the said Luke Lea was President of the debtor corporation, and not the said Edward W. Carmack. Respondent avers that said petition was filed wholly without any legal authority from the debtor corporation, this precipitate action being taken regardless of the consequences for the sole and single purpose of postponing a sale of the properties without the slightest hope or expectation of ever being able to offer any acceptable plan of reorganization.

In this connection respondent shows that any such proposed plan of reorganization would either have to pay and satisfy the bondholders' claims in full, or obtain the consent of two-thirds of such bondholders as well as two-thirds of the unsecured creditors. Further the consent of the proper number of preferred stockholders would have to be obtained to a reorganization plan. Respondent avers that the debtor well knows that under these circumstances it will never be able to present any feasible plan that will be approved by the bondholders, the unsecured creditors and preferred stockholders, as required by Section 77-B of the Bankruptcy Act, and that for this additional reason said petition was not filed in good faith, and should be dismissed.

VII

Respondent denies that either the debtor or the said Edward W. Carmack has reasonable assurance of outside finan-

cial support, and denies that if relief under Section 77-B of the Bankruptcy Act is granted that either the debtor or the said Carmack will be able to effect a reorganization in this cause, and avers that the only effect of this proceeding will be to prejudice creditors and interested parties by reason of the unsettled condition precipitated in the affairs of the newspaper by postponing the sale, and that it is to the interest of all creditors and all other parties that said petition be forthwith and peremptorily dismissed as not being filed in good faith.

Your respondent, therefore, moves the court to dismiss the petition for the reason that it was not filed in good faith, as shown by the facts and circumstances hereinbefore set out.

BASS, BERRY & SIMS,
Attorneys for Respondent.

STATE OF TENNESSEE
COUNTY OF DAVIDSON

Paul Davis makes oath that he is President of the American National Bank of Nashville; and that he is familiar with the matters and things stated in the foregoing answer; and that the statements made therein are true, and those made on information and belief he verily believes to be true.

PAUL M. DAVIS.

Sworn to and subscribed before me, this the 11th day of July, 1935.

My Commission expires 7-7-38.
(SEAL)

R.C. ROGERS,
Notary Public.

RESPONSE OF O. H. INGRAM AND J. C. BRADFORD ON ORDER TO SHOW CAUSE
and
ANSWER OF O. H. INGRAM AND J. C. BRADFORD TO PETITION

(Filed July 12, 1935)

Come O. H. Ingram and J. C. Bradford, and for response to the order to show cause heretofore entered on June 6,

1935, and for answer to the petition herein, state as follows:

Respondents, O. H. Ingram and J. C. Bradford are the lawful owners and holders of $60,000 in principal amount of 6½% Fifteen Year Debenture bonds dated November 1, 1928, issued by Debtor, Tennessee Publishing Company, and numbered 566 and 625, inclusive. Said bonds have attached to them, unpaid, the semi-annual interest coupons maturing on May 1, 1933, and subsequent to that date. Said bonds are a part of a series of bonds issued by Debtor as of November 1, 1928, and secured by a trust indenture of the same date recorded in book 708, page 69, in the Registers Office for Davidson County, Tennessee.

Said trust indenture executed to secure said series of bonds aggregating $750,000 in principal amount covers all of the properties of the Debtor of every kind whatsoever, exclusive only of materials, supplies, merchandise consumable in the usual course of business, shares of stock, securities, cash, claims, book accounts, and bills and notes receivable. All of the properties of said Debtor have been in the hands of Lit J. Pardue, Receiver, appointed by this Court in the cause entitled C. O. Carpenter, Receiver, v. Tennessee Publishing Company, Number 546 in Equity, for over two years.

In addition to said $750,000 in principal amount of first mortgage bonds with past due interest thereon, said Debtor has unsecured debts of approximately the same amount, so that its total debts are in excess of $1,500,000. All of these claims were filed and allowed by the Standing Master in said receivership cause. The reference to said Master to take proof and report upon said claims was ordered on June 3, 1933, and his report filed on March 20, 1935. Certain exceptions in minor particulars have been filed by the Receiver to said report which are now under consideration by this Court.

Said Receiver, in his operations of said properties of Debtor for the past two years and more, has been unable to earn enough to pay the monthly compensation allowed to him and his attorneys by the Court, and has borrowed money from banks to which he is now indebted in a sum exceeding $25,000 It is to the manifest interest of the bondholders, including these respondents, that this operation be not continued, and that the properties be sold at an early date with as little added expense as possible.

Respondents have investigated the value of said properties and are advised and aver that their value in no way approaches the aggregate of the debts and is probably less than half

the aggregate of said debts. Respondents believe and aver that said low value of said properties in comparison with the outstanding debts is the result of the methods by which Debtor operated said properties for the several years prior to the receivership, in which substantially all income was taken out and used in the payment of large salaries and in the making of loans to or for the benefit of its officers and common stockholders who were in control; and that said condition of Debtor is attributable to said management, which was a fraud upon its bondholders, and not merely to general economic conditions.

So far as these respondents are concerned, and they believe and aver that the other bondholders have the same view, neither the Debtor nor its officers or stockholders have anything to offer which would be of any value to them in a reorganization, from the standpoint of experience, knowledge, or ability in the management of the properties or otherwise; and these respondents will not vote in favor of a reorganization of Debtor.

Respondents are advised and state that the petition herein will not be found to have been filed in good faith within the meaning of Section 77B of the Bankruptcy Act, unless the proceeding offers a probability of benefit to some party, either the Debtor or its creditors. Respondents state that this proceeding offers no hope of benefit to any party for the following reasons:

(1) No benefit is offered to the creditors because everything that could be accomplished in their behalf has been accomplished in the equity receivership now pending, and the proposed proceeding under Section 77B of the Bankruptcy Act would prolong the operation of said properties at a loss, delay the sale, and add materially to expenses.

(2) No benefit is offered to the Debtor because there is no possible equity for the Debtor in the properties, and no probability of any equity if a sale should be postponed, and there is no possibility of a reorganization in which the officers or stockholders of the Debtor could participate in any way.

Respondents would further show that the petition herein was filed on the same day that this Court had set for a hearing in said equity receivership on a motion for the sale of Debtor's properties, and respondents plead and rely upon Debtor's laches in delaying the filing of said petition as a bar

to the relief sought, and as an indication of its lack of good faith.

Respondents now expressly deny and controvert the following allegations of the petition herein:

(a) ". . . that a sale of the property of the Debtor at the present time and under present conditions could be made only at a great sacrifice and would be to the injury and detriment of all classes of creditors."

(b) That Debtor's president, Edward W. Carmack, is or has been in any substantial way "in negotiation with numerous of the creditors of both classes."

(c) That Debtor's said president, Edward W. Carmack, "has reasonable assurance of outside financial support wherein and whereby, if the Debtor is granted the relief under Section 77B of the Bankruptcy Act, it will be able to effect a reorganization thereunder, to the great benefit of its creditors and other interested parties."

Wherefore these respondents pray that the petition herein be disallowed and dismissed, and that the possession of Debtor's properties be not restored to it.

PITTS, McCONNICO, HATCHER & WALLER,
Attorneys for Respondent.

STATE OF TENNESSEE
COUNTY OF DAVIDSON

J. C. Bradford, one of the respondents, makes oath and says that he is familiar with the matters and things stated in the foregoing response and answer, and that the statements therein made are true to the best of his knowledge, information and belief.

J. C. BRADFORD,

Sworn to and subscribed before me this 12th day of July, 1935.

(SEAL)

RUTH EDWARDS,
Notary Public.

My commission expires: 10-20-36.

AFFIDAVIT AS TO MAILING OF NOTICES

(Filed July 13, 1935)

STATE OF TENNESSEE
COUNTY OF DAVIDSON

I, Edward W. Carmack, President of the Tennessee Publishing Company, do solemnly swear that I mailed, in the Postoffice at Nashville, Tennessee, on June 26, 1935, notices to all stockholders, creditors, and Attorneys of records in the case of C. O. Carpenter, Receiver, vs. Tennessee Publishing Company, pursuant to the Order of the Honorable John J. Gore, Federal District Judge.

EDWARD W. CARMACK.

Subscribed and sworn to before me, this 26th day of June, 1935.

(SEAL)

ALINE J. SWAIN,
Notary Public.

My commission expires Feb. 8, 1938.

Tennessee

NASHVILLE, Tenn.—John D. Fletcher, C. E. Rose, W. C. Collier, C. G. Stephens, John T. Benson, Tim H. Moore, P. A. Shelton, E. C. Hass, M. E. Derryberry, W. B. Thurman, T. L. Herbert, G. L. Stroud, T. H. McNish, O. K. Kilvington, Herman Suter, John A. Patten, Mrs. Winnifred Moran, J. H. Allison, G. B. Howard, John A. Pitts, A. H. Mizell, M. S. Combs & Co., J. B. Daniel, J. T. McQuiddy, W. B. Sneed, A. J. Hall, J. H. Smith, C. T. Cheek, D. C. Scales, B. J. Farrar, A. Tillman Jones, A. S. Ransom, A. S. Warren, R. E. Fort, Walter Stokes, Howell E. Jackson, W. C. Collier, W. T. Hardison, A. E. Booth, Henry Beach Carre, John E. Shelton, John H. DeWitt, G. C. Savage, J. H. Hunter, Jr., E. E. French, W. O. Bearden, G. W. Cain, J. H. McPhail, C. A. Craig, W. R. Wills, Jas. H. Malone, Luke Lea, Jr., A. N. Trice, J. O. Cheek, Jas. S. Yowell, C. B. Wallace, John A. Patten, C. M. Shook, G. M. Neely, J. A. Witherspoon, R. E. Folk, Percy W. Lea, Sec., W. T. Teas, Adm., Shepard Place, Meridian Street Church, Cleo Barbee, c/o Nashville Tennessean, L. C. Bligh, c/o Nashville Tennessean, E. P. Carlet, c/o Nashville Tennessean, John M. Cartwright, c/o Rucker & Pearson, Henry Dickinson, Stahlman Bldg. R. J. Gardner, c/o Tennessean, Nashville Warehouse & Elevator Co., J. M. Prather, Sharendale Drive, J. W. Roper, c/o Tennessean, W. A. Seigenthaler, c/o Tennessean, Tennessee Hermitage National Bank (for use and benefit of Commerce Union Bank), George F. Jones, D. B. A., Nashville Printers Roller Works, 911 Berryhill St., Broadway Dis-

count Corporation, Guaranty Mortgage & Loan Co., Apex Oil Corp., 806 16th Ave., No., W. E. Norvell, Jr., Nichol Bldg., E. S. Tanner, c/o Tennessean, Commerce Union Bank, J. G. Lackey, Atty., Stahlman Bldg., Luke Lea, c/o State Penitentiary, Raleigh, N. C., Watagua Trust Co., 160 Second Ave., North, Mrs. Percy Warner Lea, 160 Second Ave. North, Broadway National Bank, Fourth & First Banks, Inc., Guaranty Mortgage & Loan Co., Mrs. Percy Warner, Harding Road, W: G. Bush & Co., 174 3rd Ave. North, American National Bank, O. H. Ingram, 1101 63rd Ave. No., Nashville.

ATTORNEYS—Manier & Crouch, Attys., Baxter Bldg, Shriver & Shriver, Attys., Independent Life Bldg., Pitts, McConnico, Hatcher & Waller, American Trust Bldg., W. E. Norvell, Jr., Nichol Bdlg., Bass, Berry & Sims, American Trust Bldg., P. D. Maddin, American National Bank Bldg., Joseph Higgins, Stahlman Bldg., Wm. J. Wade, Nashville Trust Bldg., Goodpasture & Carpenter, Stahlman Bldg., J. U. Rust, Jr., 145 Windsor Drive, W. Rufus Pardue, 403½ Union St., J. G. Stephenson, Stahlman Bldg., L. J. Pardue, Tennessean, W. B. Marr, American National Bank Bldg., Elkin Garfinkle, Stahlman Bldg., Seay, Stockell & Edwards, American National Bank Bldg., W. S. Noble, Stahlman Bldg., Marion Tillman, Stahlman Bldg., Cornelius, McKinney & Gilbert, Nashville Trust Bldg., J. G. Lackey, Stahlman Bldg., David Keeble, Nichol Bldg.

CHATTANOOGA, Tenn.—R. B. Davenport, Tennessee Electric Power Co., C. S. Moore, Tennessee Electric Power Co,

MEMPHIS, TENN.—Herbert F. Fisher, John T. Walsh, W. C. Knight, Jas. H. Malone, G. T. Fitzhugh, W. A. Percy, Mrs. A. Hamilton, Dr. B. G. Henning, F. D. Smith, K. D. McKellar, T. K. Reddick, E. G. Bell, W. L. Terry, W. L. Terry & E. G. Bell, James Jackson, W. H. Carroll, Thos. J. Jackson, C. H. Heiskell, Thos. W. Briggs, D.B.A. Thomas W. Briggs Co., 16th Floor Columbian Mutual Tower, Standard Oil Co. of La., Geo. C. Love.

KNOXVILLE, TENN.—L. D. Tyson, James Gleason, Receiver, Holston Trust Co., C. O. Carpenter, Receiver, Holston Union Natl. Bank.

ATTORNEYS—Jennings & O'Neil, Fowler & Fowler.

JACKSON, TENN.—E. L. Bullock, Clarence Pefford.

LEWISBURG, TENN.—W. W. Ogilvie, Trustee.

COLUMBIA, TENN.—Wm. J. Howard, J. W. Howard, Otey J. Porter, Jonas T. Annis, Mrs. Coby D. Carmack.
SPRINGFIELD, TENN.—W. H. Simmons.
FRANKLIN, TENN.—W. J. Polk, J. E. Eggleston, Trustee, Frank D. Lander, H. P. Fowlkes, J. C. Eggleston, Trustee.
CENTERVILLE, TENN.—J. B. Walker.
BELL BUCKLE, TENN.—Wm. R. Webb, Jr., W. R. Webb.
SHELBYVILLE, TENN.—E. Shapard, Thos. H. Greer, Chas. S. Ivie, W. J. McGill, Raymond McGill, Wm. McGill.
BROWNSVILLE, TENN.—J. O. Bomar.
PARIS, TENN.—O. C. Barton.
GALLATIN, TENN.—Mrs. Laura S. Branham.
CLEVELAND, TENN.—J. H. Hardwick, C. L. Hardwick.
CLARKSVILLE, TENN.—Collin Goodlett.

Georgia

ATLANTA, GA.—Western Union Tel. Co.

Oklahoma

SAPULKA, OKLA.—D. S. McDougal.

Missouri

ST. LOUIS, MO.—Geo. H. Morrill Co., 1514 Pine St., Hayes Supply Co., 1619 N. Broadway.

Alabama

BIRMINGHAM, ALA.—Postal Telegraph Cable Co.

Louisiana

NEW ORLEANS, LA.—Mergenthaler Linotype Co., 549 Barrone St., Canal Bank & Trust Co., Dart & Dart, Attys., Canal Bank & Trust Co.

New York

NEW YORK, N. Y.—Metro Associated Services, Inc., 130 West 30th St., St. Maurice Valley Paper Co., Ltd., 230 Park Ave., Certified Dry Mat Corp., 342 Madison Ave., Irvin Trust Co., Rec. for R. Hoe & Co., Inc., 138 St. & East River, United Press Association, 220 E. 42nd St., Weil, McGinnis & Sloman, 535 Fifth Ave., L. Martin & Co., 45 E. 42nd Street, Jos. M. Shapiro, D.B.A., Pub. Pattern Service Co., 44 W. 18th St., Walsh & Levine, Attys., 274 Madison Ave.

Michigan

DETROIT, MICH.—Evans & Brisbois, 601 Boyer Bldg.

Ohio

ALLIANCE, OHIO.—Industrial Products Co.
AKRON, OHIO.—Goodyear Service, Inc.

Affidavit As To Mailing Of Notices
First Plan Of Re-Organization

Indiana

INDIANAPOLIS, IND.—American Newspaper Publishers Assn., Circle Tower.

Illinois

CHICAGO, ILL.—Imperial Type Metal Co., 1800 S. 54th Ave., Audit Bureau of Circulation, 165 W. Wacher Drive, Harold M. Pittman Co., 51st Ave. & 33rd St., National Newspaper Service, 326 W. Madison St., C. E. Nichols, 100 N. La-Salle St., Meyer Both Company, Michigan Ave., at 20th, Stevens Davis Co., 1234 W. Jackson Blvd., John M. Branham Co., 360 N. Michigan Ave., Major Market Newspapers, Inc., 400 W. Madison, McNab, Holmes & Levy, Audit Bureau of Circulation, 126 W. Wacher Drive.

JOILET, ILL.—Gerlach-Barkow Co.

FREEPORT, ILL.—Mason & Prestley, Attys., Burgess Cellulose Co., Burgess Cellulose Co.

Pennsylvania

PHILADELPHIA, PA.—Lanston Monotype Machine Co., 24th at Locust St., Peerless Printing Ink Co., 1306 Melon St.

Massachusetts

WORCESTER, MASS.—New England Newspaper Supply Co.

CAMBRIDGE, MASS.—Elliott Addressing Machine Co., 143 Albany St.

Minnesota

MINNEAPOLIS, MINN.—R. H. M. Robinson and G. T. Jaffray, Recs., Minnesota & Ontario Paper Co.

FIRST PLAN OF RE-ORGANIZATION

(Filed July 13, 1935)

DEBTOR proposes as its plan of re-organization, the following:

I

(a) That the value of all of the securities, to-wit: the bonds issued by debtor, be ascertained and judicially de-

termined by this Court.

(b) That the value of all of the assets of debtor be ascertained and judicially determined by this Court. Such values to be itemized as to each specific piece of property, so that the respective rights of claimants thereto, may be ascertained, to the end that the allocable interest of the respective claimants in each specific asset of debtor may be judicially fixed and determined.

(c) That the costs of the Receivership in the case of C. O. Carpenter, Receiver vs. Tennessee Publishing Company, pending in this court, be ascertained and judicially determined.

The above and foregoing matters are to be ascertained by Appraisers to be appointed by the Court, and/or by reference to a Master; and upon the coming in of such appraisal and Master's Report, to be judicially determined and fixed by action of the Court.

The above and foregoing matters to be adjudicated expeditiously; if possible, within thirty (30) days from the date of the filing of this Plan.

II

DEBTOR, upon the adjudication of the values, matters and things set out in (1) above, will issue its 10 Year First Mortgage Bonds in an amount amply sufficient to cover the value of all of its properties so judicially determined, said bonds to be secured by a First Mortgage on all the properties of debtor to be of the denomination of $100.00 each, and to bear interest at the rate of five per cent. (5%) per annum, payable semi-annually. Said bonds to be sold for not less than ninety-seven (97c) cents on the dollar, and said entire issue of bonds marketed by February 1, 1936.

Said entire issue of bonds to be placed in escrow with such party as may be named by the Court, to which party, the proceeds from the sale of said bonds shall be paid; and when all of said issue of bonds shall have been subscribed and paid in to said Escrow Agent, debtor to pay in cash from the donation to be made by its Common Stockholders, as hereinafter set out, any deficiency between the face value of all of said bonds and the price at which said entire issue of bonds shall be sold.

Upon the sale of all of said bonds, and the payment of the deficiency, if any there be, by debtor, the Escrow Agent shall thereupon, pay into Court, or to such party as may be desig-

nated by the Court, a sum equal to the value of all of the properties of debtor, as the same may be adjudicated and determined, as provided in (I) above. And said sum shall be disbursed under the orders of this Court—

(a) To pay the costs in the present proceedings;

(b) To pay the costs of the Receivership in the case of C. O. Carpenter, Receiver v. Tennessee Publishing Company;

(c) To pay any and all other preferred claims, such as taxes, wages, etc., which may have arisen prior to Carpenter Receivership;

(d) The balance to be distributed between the secured and unsecured creditors of Debtor, and the stockholders thereof, as their interests may appear.

III

As soon as it is definitely determined how much will be paid the unsecured creditors from the proceeds of the sale of the proposed bond issue, as above set out, debtor will issue class "A" preferred stock in sufficient amounts, at the par value of $10.00 per share, to make up the deficit, if any shall exist between the total amount paid, or to be paid the unsecured creditors, and the sum of One Hundred Thousand ($100,000) Dollars, to be divided ratably among such unsecured creditors.

Such Preferred Stock class "A", shall bear a fixed dividend of six per cent. (6%) per annum, and shall be non-cumulative and non-voting, and shall be callable at any dividend payment date, at par value thereof, plus earned dividends of the year in which called.

IV

As soon as it is definitely determined how much will be paid the preferred stockholders from the proceeds of the sale of the proposed bond issue, as above set out, debtor will issue class "B" preferred stock in sufficient amounts, at the par value of One Dollar ($1.00) per share, to make up the deficit, if any shall exist, between the total amount paid, or to be paid the preferred stockholders, and the sum of Twenty-five Thousand ($25,000.00) Dollars, to be divided ratably among such preferred stockholders upon the surrender of their present certificates.

Such preferred stock, Class "B" shall bear a fixed dividend of five per cent. (5%) per annum, and shall be noncumulative

and non-voting, and shall be callable at any dividend payment date, at par value thereof, plus earned dividends of the year in which called.

V

Upon the sale of all of debtor's bonds provided to be issued under (II) above, debtor will cause to be donated by its common stockholders, the sum of Fifty Thousand ($50,000) Dollars into the Treasury of debtor, to be used—

(a) To pay any deficiency, as provided in (II) above;

(b) To be used as additional working capital, and/or for betterment and improvements, as the needs of debtor may require.

VI

Debtor proposes, from and after the return to its possession of its properties, to guarantee as follows:

(a) That during the time debtor is in possession of its properties, and pending final consummation of its plan of re-organization, the operating loss during said period will be ten per cent. (10%) less than the average operating loss of the Receiver in the case of—Carpenter, Receiver, vs. Tennessee Publishing Company—for the corresponding periods in the years 1933 and 1934.

(b) From and after the date the value of all of debtor's property shall have been judicially determined by the Court, and provided debtor is in possession of its properties at the time, or then from such time thereafter as debtor may be put into possession of its properties, debtor will pay into Court, or to such party as may be designated by the Court, a sum equal to a rate of six per cent. (6%) per annum,—(the legal rate of interest in the State of Tennessee)—on such adjudicated value of all of the properties so in its possession, such payments to be made monthly, in advance, and to continue until February 1, 1936. Provided, of course, that such payments shall cease upon the final confirmation and completion of the re-organization.

In the event debtor shall fail to reduce the operating loss ten per cent. (10%) as above provided and/or shall fail to pay the interest monthly upon the adjudicated value of all of debtor's property above provided, and such failure shall continue for two months without debtor making good such default by causing to be paid in cash, such difference and

interest. then debtor shall forfeit all right to remain in possession of its properties.

In case debtor shall be restored to the possession of its properties, and if for any reason the Court shall thereafter take said properties out of debtor's possession, then debtor's guarantee as to operating loss and obligation to pay interest upon the adjudicated value of its properties, shall cease and determine.

VII

As and when debtor shall be restored to possession of its property, it will cause to be deposited $20,000.00 in cash, or Cashier's check drawn upon a good and solvent National Bank of the City of Nashville, payable to any party named or designated by the Court, and such sum shall be held by such party and used and applied in the fulfillment of obligations of debtor to reduce loss and pay interest on value of properties as provided in VI above. And in case debtor shall default in the payment of any excess in operating expenses, and/or the payment of interest upon the adjudicated value of all of its properties as hereinbefore provided, then such amounts in default shall be retained by the holder of said deposit; and in case debtor does not make said default good, within two (2) months, by causing the same to be paid in cash into debtor's treasury, then debtor shall forfeit all right to further possession of said property and out of said deposit the holder thereof shall pay the amounts of said default into debtor's treasury and pay the balance of the deposits to the holders of the common stock.

VIII

As and when debtor shall be restored to the possession of its property, it will cause to be executed, a bond in the nature of a Trustee's Bond, in such amount as the Court may determine, to faithfully account for all funds, properties and obligations coming into its possession, and to contain the same conditions and provisions as the present bond of the Hon. Lit. Pardue, Receiver, in the case of Carpenter vs. Tennessee Publishing Company—or as the same may be ordered by the Court.

Likewise, as and when debtor shall be restored to possession of its properties, it will cause a bond to be executed, conditioned that in case, for any reason, the Court shall take possession of said properties from debtor, that at the time the same are so taken, the physical properties shall be in as

good conditiion at the time they are taken; as they were at the time returned to debtor's possession, ordinary wear and tear excepted. The last named bond to be in the penalty of such sum as the Court may fix.

IX

Upon compliance by debtor with each and every obligation herein imposed upon debtor, debtor shall be vested with the title to all of its properties, free and clear of all liens, claims and encumbrances, except those herein assumed, and hereafter to be incurred by debtor, such vestiture of title to be effected by decree of Court, conveyance, or otherwise, as the Court may order. And the deposits provided for in VII above or any balance thereof as the case may be, shall be returned to the Common Stockholders.

Respectfully submitted, this July 13, 1935.

TENNESSEE PUBLISHING COMPANY.
By E. W. CARMACK, President,
Debtor.

WHITE & HOWARD
JORDAN STOKES, JR. & SONS,
Attorneys for Debtor.

AFFIDAVIT OF LUKE LEA, JR.

STATE OF TENNESSEE
COUNTY OF DAVIDSON

(Filed July 13, 1935)

Comes Luke Lea, Jr., who makes oath in due form of law that he is personally acquainted with the facts stated in this affidavit, and knows the same to be true of his own knowledge. That E. W. Carmack, Jr., is the absolute owner in fee of all the shares of the common stock of Tennessee Publishing Company formerly owned by his father, Luke Lea, and that his father has no repurchase agreement, lien or other encumbrance against any of said stock, nor has he any

understanding or agreement of any kind whatever that his father, Luke Lea, is to be interested in any way or manner whatsoever in the efforts and/or results of E. W. Carmack, Jr., in securing the re-organization of the affairs of Tennessee Publishing Company, and that his father, Luke Lea, has no financial interest whatever in said re-organization plans. Neither has this affiant or anyone else connected with the family of affiant any interest whatsoever in any of the matters above set out. Said E. W. Carmack, Jr., is acting for himself and such other associates as may be interested with him, to affiant unknown, and none of the associates of the said Carmack are in anywise connected with affiant or with his father or family, nor have they ever been so far as this affiant knows. Affiant further makes oath that he is Attorney-in-Fact for his father Luke Lea, by registered power of attorney, registered in the Register's office of Davidson County, Tennessee.

LUKE LEA, JR.

Subscribed and sworn to before me on this July 12, 1935.

(SEAL) ALINE J. SWAIN,
Notary Public.

My Commission expires Feb. 8, 1938.

SECOND PLAN OF RE-ORGANIZATION

(Filed August 31, 1935)

DEBTOR offers, as supplement to, or as an alternate of, its plan of re-organization filed and submitted to the Court on July 13th, 1935, the following:

I

(a) That the value of all of the securities to-wit: the bonds issued by debtor, be ascertained and judicially determined by the Court in this proceeding.

(b) That the value of all of the assets of debtor be ascertained and judicially determined by the Court in

this proceeding. Such values to be itemized as to each specific piece of property, so that the respective rights of claimants thereto, may be ascertained, to the end that the allocable interest of the respective claimants in each specific asset of debtor may be judicially fixed and determined.

(c) That the costs of the Receivership in the case of C. O. Carpenter, Receiver vs. Tennessee Publishing Company, pending in this Court, be ascertained and judicially determined.

The Debtor believes that the most effective and accurate manner of ascertaining the foregoing matters would be by ordering a reference to a Master; and especially so as to the matter of placing a value upon the outstanding bonds or securities, as set out in (a) above. And, if it will save time and expense, Debtor has no objection to the evidence, that has heretofore been taken before the Master, the Honorable Byrd Douglas, in the case pending in this Court of C. O. Carpenter, Receiver vs. Tennessee Publishing Company being filed with and considered by the Master appointed herein; but, of course, reserving the right of the debtor and any other interested party, to question the validity, equity, justness and amount of securities, bonds or claims presented to the Master in this cause; and to offer evidence in support thereof before said Master. And, that all claims of indebtedness against the debtor be required by the Court to be duly filed in this proceeding; and to be submitted by the Court to the Master to hear proof, as above set out, and to report thereon. Also, to report as to the value of any and all securities or outstanding bonds against debtor, as provided by the statute designated "77B".

And further that the value of all of the assets of the debtor, as set out in paragraph "(b)" hereinbefore be submitted by the Court to said Master to hear proof, and report on this matter; or, if the Court deems it more effective and proper, let said assets be appraised.

Upon the coming in of the report of the Master, as above set out, on matters submitted to him, and, if, in addition to said Master's report, there is also an appraisal, that the same be judicially determined and fixed by action of the Court in this cause, after a hearing thereon, in accordance with the rules of the Court applicable thereto.

II

Debtor, upon adjudication of the values, matters and things, set out in paragraph "I" above, will issue its individual ten year first mortgage bonds in an amount amply sufficient to cover the value of all of its properties so judicially determined. Said bonds to be secured by a first mortgage on all of the properties of debtor; to be of a denomination of One Hundred ($100.00) Dollars each, and to bear interest at the rate of five (5) percent per annum, payable semi-annually. Said bonds to be sold for not less than ninety-seven (.97) cents on the dollar. Said entire issue of bonds to be marketed within whatever time limit the Court sees proper to fix, reasonable, fair and just, and not to be later than Feby. 1, 1936.

Said entire issue of the new bonds to be placed in escrow with such party as the Court may designate, to which party the proceeds from the sale of said bonds shall be paid. And, when all of said issue of bonds shall have been subscribed and paid into said escrow agent, the debtor will pay in cash from the donations to be made by its common stockholders, as hereinafter set out, any deficiency between the face value of all of said bonds and the price at which said entire issue of bonds shall be sold.

The debtor, to further assure this Honorable Court of its good faith, sincerity and ability to carry out its plan of re-organization, will, within five days, after the approval by the Court of this alternate plan of re-organization, submit to the Court a guarantee or underwriting of the sale of its aforesaid proposed securities or bonds to the extent of Three Hundred Thousand ($300,000.00) Dollars; the amount stated to be maximum value of all properties of debtor in the sworn answer in this cause of the Receiver of the Holston Union Bank, of Knoxville, and a holder of a portion of the outstanding bonds claimed against debtor, and the petitioner asking for the sale of debtor's property in the Receiver Case; or, if the creditors, entitled thereto, prefer, debtor will deliver to them its new securities provided for herein.

The said guarantee or underwriting to be furnished by the debtor within five days, will be by such parties and in such manner as will thoroughly and positively satisfy the Court that said amount of money, Three Hundred Thousand ($300,000.00) Dollars will be paid in for said securities, within the period as hereinbefore stated, namely, at such time as the Court may declare to be just, equitable and reasonable, and, in no event, to be later than Feby. 1, 1936. Otherwise stated, the debtor guarantees the payment of Three Hundred Thou-

sand ($300,000.00) Dollars as payment for all of the property of debtor, if that amount, is fixed by the Court as a reasonable value of said property. Within five days after this plan is adopted by the Court, debtor will furnish to the Court ample and satisfactory evidence of its ability to live up to this guarantee.

It is further a part of the plan that, should the value of debtor's property be judicially determined herein to be less than Three Hundred Thousand ($300,000.00) Dollars, in that event, the difference between the value so fixed and the Three Hundred Thousand ($300,000.00) Dollars, shall be paid into the Treasury of debtor and used as additional working capital.

Upon the sale of said bonds and the payment of the deficiency, if any, by the Debtor, as herein provided, the escrow agent, shall, thereupon, pay into the Court, or to such party as may be designated by the Court, the sum equal to the value of all of the properties of debtor as the same may be adjudicated and determined, as provided in paragraph "I" herein. Said sum shall be disbursed under orders of the Court.

(a) To pay the costs in the present proceedings;

(b) To pay the costs of the Receivership in the case of C. O. Carpenter, Receiver v. Tennessee Publishing Company;

(c) To pay any and all other preferred claims, such as taxes, wages, etc., which may have arisen prior to Carpenter Receivership;

(d) The balance to be distributed between the secured and unsecured creditors of Debtor, and the stockholders thereof, as their interests may appear.

III

As soon as it is definitely determined how much will be paid the unsecured creditors from the proceeds of the sale of the proposed bond issue, as above set out, debtor will issue class "A" preferred stock in sufficient amounts, at the par value of $10.00 per share, to make up the deficit, if any shall exist between the total amount paid, or to be paid the unsecured creditors, and the sum of One Hundred Thousand ($100,000.00) Dollars, to be divided ratably among such unsecured creditors.

Such preferred Stock, class "A", shall bear a fixed dividend

of six per cent. (6%) per annum, and shall be non-cumulative and non-voting, and shall be callable at any dividend payment date, at par value thereof, plus earned dividends of the year in which called.

IV

As soon as it is definitely determined how much will be paid the preferred stockholders from the proceeds of the sale of the proposed bond issue, as above set out, debtor will issue class "B" preferred stock in sufficient amounts, at the par value of One Dollar ($1.00) per share, to make up the deficit, if any shall exist, between the total amount paid, or to be paid the preferred stockholders, and the sum of Twenty-five Thousand ($25,000.00) Dollars, to be divided ratably among such preferred stockholders upon the surrender of their present certificates.

Such preferred stock, Class "B" shall bear a fixed dividend of five per cent. (5%) per annum, and shall be non-cumulative and non-voting, and shall be callable at any dividend payment date, at par value thereof, plus earned dividends of the year in which called.

V

Upon the sale of all of debtor's bonds provided to be issued under (II) above, debtor will cause to be donated by its common stockholders, the sum of Fifty Thousand ($50,000.00) Dollars into the Treasury of debtor, to be used—

(a) To pay any deficiency, as provided in (II) above;

(b) To be used as additional working capital, and/or for betterment and improvements, as the needs of debtor may require.

VI

Debtor, proposes, from and after the return to its possession of its properties, to guarantee as follows:

(a) That during the time debtor is in possession of its properties, and pending final consummation of its plan of re-organization, the operating loss during said period will be twenty-five percent. (25%) less than the average operating loss of the Receiver in the case of—Carpenter, Receiver vs. Tennessee Publishing Company—for the corresponding periods in the years 1933 and 1934.

(b) From and after the date the value of all of debtor's property shall have been judicially determined by the

Court, and provided debtor is in possession of its properties at the time, or then from such time thereafter as debtor may be put into possession of its properties, debtor will pay into Court, or to such party as may be designated by the Court, a sum equal to a rate of six per cent. (6%) per annum,—(the legal rate of interest in the State of Tennessee)—on such adjudicated value of all of the properties so in its possession, such payments to be made monthly, in advance, and to continue until February 1, 1936. Provided, of course, that such payments shall cease upon the final confirmation and completion of the re-organization.

In the event the debtor shall fail to reduce the operating loss twenty-five percent. (25%) as above provided, and/or shall fail to pay the interest monthly upon the adjudicated value of all of debtor's property above provided, and such failure shall continue for one month without debtor making good such default by causing to be paid in cash, such difference and interest, then debtor shall forfeit all right to remain in possession of its properties.

In case debtor shall be restored to the possession of its properties, and if for any reason the Court shall thereafter take said properties out of debtor's possession, then debtor's guarantee as to operating loss and obligation to pay interest upon the adjudicated value of its properties, shall cease and determine.

VII

As and when debtor shall be restored to possession of its property, it will cause to be deposited Twenty-five Thousand ($25,000.00) Dollars, in cash, or Cashier's check drawn upon a good and solvent National Bank of the City of Nashville, payable to any party named or designated by the Court, and such sum shall be held by such party and used and applied in the fulfillment of obligations of debtor to reduce loss and pay interest on value of properties as provided in VI above. And, in case debtor shall default in the payment of any excess in operating expenses, and/or the payment of interest upon the adjudicated value of all of its properties as hereinbefore provided, then such amounts in default shall be retained by the holder of said deposit; and in case debtor does not make good said default, within one (1) month, by causing the same to be paid in cash into debtor's treasury, then debtor shall forfeit all right to further possession of said property and out of said deposit the holder thereof shall pay the amounts of said default into debtor's treasury and pay

the balance of the deposits to the holders of the common stock.

VIII

As and when debtor shall be restored to the possession of its property, it will cause to be executed, a bond in the nature of a Trustee's bond, in such amount as the Court may determine, to faithfully account for all funds, properties and obligations coming into its possession, and to contain the same conditions and provisions as the present bond of the Hon. Lit Pardue, Receiver, in the case of Carpenter vs. Tennessee Publishing Company—or as the same may be ordered by the Court.

Likewise, as and when debtor shall be restored to possession of its properties, it will cause a bond to be executed, conditioned that in case, for any reason, the Court shall take possession of said properties from debtor, that at the time the same are so taken, the physical properties shall be in as good condition at the time they are taken, as they were at the time returned to debtor's possession, ordinary wear and tear excepted. The last named bond to be in the penalty of such sum as the Court may fix.

IX

Upon compliance by debtor with each and every obligation herein imposed upon debtor, debtor shall be vested with the title to all of its properties, free and clear of all liens, claims and encumbrances, except those herein assumed, and hereafter to be incurred by debtor, such vestiture of title to be effected by decree of Court, conveyance, or otherwise, as the Court may order. And the deposits provided for in VII above or any balance thereof as the case may be, shall be returned to the Common Stockholders.

Respectfully submitted, this 30th day of Aug., 1935.

TENNESSEE PUBLISHING COMPANY.

By EDWARD W. CARMACK,
President
DEBTOR

WHITE & HOWARD
ROBERTS & ROBERTS
LEWIS S. POPE,
Attorneys for Debtor.

FILATION ORDER OF SECOND PLAN

(Filed Sept. 13, 1935)

In this matter the debtor appeared this day and presented a supplemental or alternate plan of reorganization ,wherefore, it is ordered and adjudged that the debtor be and is hereby authorized and permitted to file this supplemental or alternate plan of reorganization in this cause. This order is made without prejudice as to disposition of any pending motions.

This the 30th day of August, 1935.

O K. as to Form.

CECIL SIMS
W. E. NORVELL, JR.
For Commerce Union Bank, ET AL

ENTER:

GORE,
Judge.

DEBTOR'S MOTIONS TO APPROVE

(Filed Sept. 13, 1935)

Comes the debtor, Tennessee Publishing Company and moves the Court:

(1) To issue an order proving its supplemental or alternate plan filed in this Court on the 31st day of August, 1935.

(2) To return the property to the debtor in accordance with the plan, the debtor to operate the same under the control and supervision of this Court in accordance with the statute and the plan. Said order to take effect upon the deposit of the money and guaranties offered in the plan.

ROBERTS & ROBERTS
WHITE & HOWARD
LEWIS S. POPE,

FILATION ORDER OF PETITION TO STAY

(Filed Sept. 13, 1935)

Honorable E. W. Carmack, President of Debtor Corporation, has this day presented a petition and motion, and asks leave of the Court to file same in this cause.

It is ordered and decreed by the Court that said petition and motion be filed, and opposing counsel will be given notice of the filation of same, and said motion and petition will be set down for hearing at some future date.

This the 12th day of September, 1935.

Approved For Entry:

GORE,
Judge.

Attorneys for Petitioner.

DEBTOR'S PETITION TO STAY

(Filed Sept. 13, 1935)

Defendant would respectfully show to the Court:

I

That in the cause of C. O. Carpenter, Receiver, v. Tennessee Publishing Co., a Receiver, appointed by this Court, has been operating the business and in control of the properties of this Debtor for more than two years, and that a reference has been had to ascertain the amounts owed by this defendant and to fix any liens, if any, held by the creditors of this defendant. That pursuant thereto the Special Master appointed has filed his report and various exceptions thereto have been filed.

II

Debtor would further show that on the 6th day of June, 1935, it filed its petition in this Court to be reorganized under

Section 77-B of the Bankruptcy Act, and that on the
date this Court entered an order approving said petiti
filed in good faith. This debtor would show the Cour
it is advised that the filing of said petition and the en
the order aforesaid has operated, as a matter of law, t
all proceedings in the cause of C. O. Carpenter, Receiv
Tennessee Publishing Co., and that no action should be
either for confirmation of the Master's report or, the h
of exceptions thereto, or for the sale of the property, s
as the matter of Tennessee Publishing Company, Debt
pending.

This debtor would further show that its rights and
ests in said reorganization proceeding might be adv
affected by any decisions or further orders made in the
said Receivership case. And that no decisions, actio
proceedings should be taken in this case until a petiti
reorganization is disposed of.

III

Petitioner would further show to the Court that re
a petition has been filed in the case of C. O. Carpente
ceiver vs. Tennessee Publishing Co., by certain unse
creditors of petitioner, in which petition said unsecured
itors are raising very serious questions as to the vali
certain bonds or secured claims, which have been file
undertaken to be proven in said Receivership case, a
included in the report filed by the Master therein. Pet
felt it advisable to apprize the Court of this petition
the seriousness of the charges therein made.

Premises Considered, Petitioner Prays:

That an order be made and entered in this cause su
ing any all further action of every kind in the case of
Carpenter, Receiver v. Tennessee Publishing Co., so l
the petition herein is still pending and undisposed of.

Grant such further and other relief as petitioner, und
law and facts, may be entitled to.

TENNESSEE PUBLISHING COM
By E. W. CARMA
Pre

ROBERTS & ROBERTS
WHITE & HOWARD
LEWIS S. POPE,
Attorneys for Petitioner.

STATE OF TENNESSEE
COUNTY OF DAVIDSON

Personally appeared before me, A. Lawson Davis, a

Public in and for the County of Davidson, State of Tennessee, the aforesaid E. W. Carmack, to one well known, who makes oath that he is President of the Tennessee Publishing Co., and that the facts stated in the foregoing petition are true.

E. W. CARMACK.

Sworn and subscribed to before me this 12th day of Sept., 1935.

My commission expires Oct. 16, 1935.

(SEAL) A. LAWSON DAVIS,

COURT CAPTION, SEPTEMBER TERM, 1935.

Being the fourth Monday of September, 1935, be it remembered that at a District Court of the United States begun and held for the Nashville Division of the Middle District of Tennessee at the Federal Court Room in the City of Nashville, Tennessee, within said District, and the Sixth Circuit on the fourth Monday, it being the 23rd day of September, 1935.

AMENDED AND SUPPLEMENTAL ANSWER OF AMERICAN NATIONAL BANK, A CREDITOR, AND AMENDED AND SUPPLEMENTAL MOTION OF SUCH CREDITOR TO DISMISS THE DEBTOR'S PETITION

(Filed October 7, 1935)

Comes the American National Bank of Nashville, a creditor, and shows to the Court that it has heretofore filed its answer and motion to dismiss the debtor's petition in response to the order to show cause, which motion the Court has heretofore taken unto consideration and is now pending and undisposed of. Said answer and motion are here and now referred to and all of the allegations therein contained are adopted and reaffirmed and said American National Bank of Nashville, by way of amendment and supplement thereto, here and now avers:

I

Upon information and belief that no one of the persons interested in the proposed plan of reorganization had any interest in the Tennessee Publishing Company either as stockholder, officer, employe, director or otherwise, prior to the day before the filing of the petition in this cause, to-wit, June 6, 1935, and that on or about June 5, 1935, the day before the time fixed for the court to act upon the motion for an order of sale in the equity receivership cause, the said Edward Carmack and his associates acquired the entire common stock of the Tennessee Publishing Company, knowing that it was absolutely worthless, for which they paid no consideration whatsoever other than the purported cancellation of a small note signed by Luke Lea and Luke Lea, Jr., both of whom they knew to be insolvent, and the note being barred by the Statutes of Limitations, the whole purpose of the transaction being to engage in a highly speculative venture, the plan being to harass the bondholders and other creditors whose claims have been allowed in the receivership cause by dilatory tactics, and that such parties do not come within the intent and meaning of Section 77B of the Bankruptcy Act and have no standing whatsoever in this court as proper parties for the reorganization of the corporation, and are not acting in good faith. The position of said parties is that of one seeking to, by a speculative position against an insolvent and by dilatory tactics, the presentation of phantastic and chimerical plans, without the slightest hope of success, force bondholders and other legitimate creditors of the insolvent corporation to make some settlement, adjustment or compromise so as to reap a

speculative profit out of the venture. This creditor stands ready to offer proof with respect to these allegations, if required by the court.

II

At the time the court permitted the petition for reorganization to be filed a decree was entered expressly providing in substance that the filing of said petition should not interfere with the hearing of the exceptions to the report of the Standing Master in the receivership cause or the judgment of the court thereon, and at the time of the hearing on the order to show cause why said petition should not be dismissed for the reason that it was not filed in good faith, on July 6, 1935, the court stated in effect that said petition would be peremptorily dismissed unless it was forthwith amended so as to provide as an express condition thereof that the respective claims, rights, liens and creditors should be as adjudicated and determined in said equity cause, whereupon the petitioning debtor, through its counsel, solemnly affirmed in open court that it would so amend its petition. The petitioning debtor has not subsequently filed any such amendment and, on the other hand, has filed a supplemental or alternative plan of reorganization which fails to incorporate any such condition precedent or provision and, which, expressly provides that all of the prior proceedings in the equity receivership cause shall be set aside and rendered nugatory and that new proceedings shall be instituted and begun before a Master on a new reference to reinvestigate and ascertain the rights, claims and liens of all parties in interest. As heretofore shown to the court, such a proceeding will retain these matters in court for at least an additional twelve months notwithstanding the fact that it is admitted by the petitioning debtor that its assets are not sufficient in value to pay its bondholders more than a fraction of their obligations, with no dividends to unsecured creditors, the preferred stock and common stock being absolutely worthless, and the receivership, according to a recent audit and appraisal, being in the meantime operating at a loss.

III

The proposed plans of reorganization submitted by the petitioning debtor are wholly impracticable, have not the slightest chance of being successful, and further proceedings in this cause will be absolutely futile. As will be seen from the plans of reorganization, the petitioning debtor has no real estate and its assets consist largely of machinery, equipment,

circulation, good will and accounts receivable, which are said by the petitioning debtor to be worth approximately $300,000.00, against a bond indebtedness exceeding $900,000.00 and an unsecured indebtedness exceeding $300,000.00 Under these circumstances the petitioning debtor proposes to issue its own ten-year bonds in the principal sum of $300,000.00, secured only by a lien upon these assets, and to sell the same to the public over a long period of time so as to yield a net sum of $291,000.00, which sum is to be used to pay off the debts of the Receiver which now approximate $25,000.00, the cost and expense of the receivership, which will no doubt equal or exceed the sum of $25,000.00, leaving a sum less than $250,000.00 to be paid out to the bondholders and unsecured creditors. It is well known that at the present time no bond can be sold to the public and is not the subject of legal investment for trust funds in Tennessee if the total principal of said bonds exceeds 50% of the appraised value of sound real estate. The petitioners seek, however, to issue bonds in a principal sum equal to the alleged value of the property, which consists only of machinery and intangible assets. It is submitted that there can be no reasonable hope of success of any such plan, and while the petitioner states that it will provide underwriters to guarantee the sale of the bonds it does not disclose the names of such underwriters and this creditor avers that no such underwriter exists and none can be provided of a required solvency to guarantee any such undertaking.

IV

Up to the time of the filing of this supplemental answer and motion, although several hearings have been had with notice to all creditors, not a single creditor, secured or unsecured, has approved or consented to the proposed plan of reorganization and, on the other hand, bondholders holding $548,000.00 in principal amount of bonds out of a total issue of $750,000.00 have appeared in open court and expressly and emphatically disapproved of said plan and declined to agree thereto, and unsecured creditors holding more than 50% of all of the unsecured debts have likewise appeared in open court and expressly disapproved of the plan and refused and declined to agree thereto. It is averred that under no circumstances will the necessary consent of creditors, as required by the provisions of Section 77B of the Bankruptcy Act, be obtained so as to permit the approval by the court of the proposed plans of reorganization.

V

If said plans of reorganization are to be construed as pro-

posing that the court order an appraisal of the assets of the debtor which are subject to the lien of the deed of trust to secure the bondholders, with a view of tendering cash or securities in the principal sum of approximately $300,000.00 in settlement and satisfaction of the lien of said bondholders and for the purpose of freeing the respective properties from said lien, it is averred that such proposal has been unanimously rejected by holders of all of said bonds who have in open court and by pleadings in this cause refused and declined to agree thereto. Said bonds were issued by the debtor on November 1, 1928, and secured by a deed of trust executed the same date by the debtor to Liberty Central Trust Company and E. J. Miller as Trustees, duly recorded in the Register's Office of Davidson County, Tennessee, as required by the laws of Tennessee, and a true copy of said indenture is filed herewith and made a part hereof as Exhibit "A". This creditor avers that prior to the passage of the amendment to the Bankruptcy Act, known as Section 77B, the holders of said bonds, including this creditor, had acquired a fixed interest and property right under the provisions and conditions of said indenture against the property and assets of the Tennessee Publishing Company, as set out and described in said indenture, and that under the laws of Tennessee prior to the passage of said amendment by Congress and at the present time said bondholders, as a matter of property rights, were entitled to have said properties and assets foreclosed and sold at public auction either through proceedings in equity in any court of competent jurisdiction or by advertisement by the Trustees, as provided in said indenture, and therefore any appraisal and payment to the bondholders of any amount in cash less than the full amount required to pay and satisfy their total indebtedness, including interest, without their consent, or involuntary scaling down of their indebtedness to the alleged present value of the property, would be a violation of the Fifth Amendment to the Constitution of the United States and would constitute the taking of this creditor's property without due process of law, and if so construed said amendment to the Bankruptcy Act known as Section 77B is wholly inoperative, unconstitutional and void. This creditor here and now asserts and claims the protection of the provisions of the Fifth Amendment to the Constitution of the United States and specifically relies upon such rights and protection and, therefore, shows to the court that said proposed plan of reorganization, which apparently is conditioned solely upon depriving this creditor of its constitutional rights, can not by any possibility ultimately succeed and, therefore, said debtor's petition should be dismissed.

In this connection it is shown to the court that all of the holders of said bonds secured by the indenture aforesaid have heretofore and do now refuse to consent to a sale of the mortgaged property to the debtor, and do refuse to consent to the delivery and transfer of said property to the debtor upon the payment of any appraised value to such bondholders unless said sums shall be sufficient to fully satisfy and pay the entire indebtedness of said bondholders, including principal and interest and do refuse to consent to accept securities or bonds to be executed under the proposed plan of reorganization in lieu of those now held by such bondholders.

It is further shown to the court that at the time of the passage by Congress of the amendment to the Bankruptcy Act known as Section 77B, this creditor and the other bondholders, under the terms of the indenture and under the laws of the State of Tennessee, and under the proceedings in the equity receivership cause known as C. O. Carpenter, Receiver, vs. Tennessee Publishing Company, pending in this court, had acquired substantive right in the specific property covered by said indenture, such property rights being as follows:

(1) The right to retain the lien until the indebtedness thereby secured is paid.

(2) The right to realize upon the security by a judicial public sale, or by sale by the Trustees, as provided in said indenture.

(3) The right to determine when such sales shall be held, subject only to the discretion of the court and to the terms and conditions of said indenture.

(4) The right to protect its interest in the property by bidding at such sale whenever held and thus to assure having the mortgaged property devoted primarily to the satisfaction of the debt, either through receipt of proceeds of a fair competitive sale, or by taking the property itself.

(5) The right to control meanwhile the property during the period of default, subject only to the discretion of the court, and to have the rents and profits collected by a receiver for the satisfaction of the debt.

This creditor avers that insofar as said proposed amendment is retroactive and seeks to interfere with, destroy or impair said fixed property rights it is violative of the Fifth Amendment to the Constitution of the United Sates and is, therefore, inoperative and void. The proposed plan of reorganization invokes and depends entirely upon the various

provisions of said amendment to the Bankruptcy Act which, if so construed, are wholly unconstitutional and void, and hence said petition should be dismissed as having no reasonable prospects for successful reorganization.

VI

This creditor further avers that a bona fide offer to purchase all of the assets at a sum greatly in excess of that proposed in the plan of reorganization has this day been filed by Paul M. Davis in the cause of C. O. Carpenter, Receiver, vs. Tennessee Publishing Company, being the equity receivership cause now pending in this court, and that such offer further proposes that it may be treated as an upset bid if the property is offered sold at a public auction under the terms and provisions of said deed of trust, with proper guaranties and assurances of the appearance by the said Paul M. Davis and the beginning of said bidding at such upset price. A true copy of said proposed offer as filed in said receivership cause is filed herewith as Exhibit "B". It is averred that under this situation and in view of the greatly increased price and consideration contained in said offer as compared with the proposed plan of reorganization, said plan of reorganization has no reasonable chance of successful acceptance by the creditors, and it is manifestly to the interest of all parties, including the debtor, that said petition for reorganization be dismissed and the properties immediately ordered sold under said written offer in said equity receivership cause.

Wherefore, for the reasons shown in this amended and supplemental answer, as well as those shown in its prior answer, this creditor here and now moves the court to dismiss said petition as not being filed in good faith for the reasons heretofore shown.

BASS, BERRY & SIMS,
Solicitors.

STATE OF TENNESSEE
COUNTY OF DAVIDSON

Paul M Davis makes oath that he is President of the American National Bank of Nashville; that he is familiar with the matters and things stated in the foregoing amended and supplemental answer; and that the statements contained therein

are true and those made on information and belief he verily believes to be true.

PAUL M. DAVIS.

Sworn to and subscribed before me, this 7th day of October, 1935..

BUFORD WILSON,
Notary Public.

(SEAL)

My Commission expires July 8th, 1936.

MOTION TO STRIKE

(Filed October 10, 1935)

Comes the debtor, Tennessee Publishing Company, and moves the Court to strike and dismiss the instrument termed by the American National Bank "Amended and Supplemental Answer of American National Bank, a creditor," and "Amended and Supplemental Motion of such Creditor to Dismiss the Debtor's petition," and for the cause of said motion would show:

I

Said instrument was filed without permission of this Court, in violation of Rules 19 and 30, governing the filing of amendments and supplements.

II

Because said instrument was not filed within the time specified and allowed by this Court for the filing and proving of the matters and things set out in said instrument. Debtor would show that petitioner filed its petition for corporate reorganization on the 6th day of June, 1935, and that on that date this Court entered an order approving said petition as

proper, and filed in good faith, and fixing a thirty day period for interested parties to show why said petition should not be sustained. The American National Bank having failed to show cause within said thirty day period cannot now come in one hundred and twenty-two days later and attempt to show cause.

III

Because the matters and things set out and alleged in said instrument were wholly immaterial and absolutely irrevelant to the proceedings in this cause.

Debtor would show that said instrument contains many allegations relative to the stock ownership in the debtor, which allegations have previously been made in open court by representatives of this creditor, and concerning which not one word of proof has ever been introduced, whereas, debtor has introduced uncontradicted testimony showing the entire history of the proceeding and the connection of the present stockholders with the debtor, and all of which matters and things have been heretofore specifically held wholly immaterial and irrelevant by this Court, and having been held that the debtor corporation was acting in the premises and not the stockholders of the debtor corporation.

IV

American National Bank further makes certain allegations as to delays occasioned by these proceedings, and losses incurred by the operation of the receivership. This allegation is again wholly immaterial and irrelevant for the reason that the record in this proceeding plainly shows the debtor corporation has endeavored to terminate these losses and offered to pay the interest on the value of the properties, and turned into court for this purpose, in Cashier's checks, $20,000.000; all of which was resisted by this very creditor, and said losses, if they are occurring, and said delay, if it does occur, are in no wise attributable to this debtor, but primarily the result of the acts of the American National Bank in the premises.

V

The American National Bank continues to refer to the proposed plan of re-organization as "wholly impracticable" and "presentment of fantastic and chimerical plans without the slightest hope of success." Such allegations and statements are wholly irrelevant and immaterial as are all allegations concerning the difficulties of the debtor in its pro-

posed plan of re-organization, because these allegations can be readily determined by the Court by giving the debtor very definite instructions to produce its funds, which the debtor has stood ready to do all the time in spite of the wholly unfounded and unsupported allegations of the American National Bank. Debtor would show that the continual repetition of the statements of the American National Bank to the effect that debtor cannot produce the funds necessary to carry out the proposed plan of re-organization is an unwarranted imposition upon the time of this Honorable Court. The fact that the creditor continues to assert that the debtor cannot comply with its plan of re-organization is tantamount to admission that if the plan can be compiled with by the debtor that it is entitled to have it ratified and confirmed by the Court.

VI

The American National Bank's allegation as to the unconstitutionality of Section 77-B comes in the face of numerous decisions in the Federal Courts upholding the same, and there is no reported decision to the contrary. The plan of the debtor is in absolute accord with the provisions of the Act itself, and the steps taken by the debtor have been in absolute accord with the terms and provisions specially laid down in Section 77-B, Amendment to the Federal Bankruptcy Act. Debtor would show that there will be paid into Court under its plan of re-organization the full value of the assets of the debtor, as determined by an appraisal ordered by this Court and as provided in said Act, which appraisal, or some modification thereof, has been, or will be judicially determined as constituting the value of said assets. Wherefore, debtor would show that neither this creditor, American National Bank, nor any other creditor of the debtor corporation, is being deprived of any property without due process of law. Said proposed plan of re-organization is in nowise a violation of any provision of the Constitution of the United States.

VII

The instrument filed by American National Bank on October 7, 1935 moves for the dismissal of debtor's petition on the ground that same is not filed in good faith, but none of the allegations in said instrument bear on this question at all, the same being wholly immaterial and irrelevant thereto. Debtor would show that if, for any reason, this Court should fail to approve its proposed plan of re-organization it is entitled to an opportunity to amend said plan of re-organization in accordance with such rulings as the Court may hand

down and that the entire record in this matter shows that the re-organization petition of debtor was filed in the highest good faith and has been pursued with the utmost diligence, in fact, to such a degree that attorneys for this creditor, American National Bank, have objected to the numerous times the matter has been brought before this Court by the debtor, in its efforts to proceed with the utmost reasonable dispatch. This debtor has done everything possible to expedite this matter, having filed its first proposed plan on the first day set by this Court, at which time the Court permitted debtor to present same, has tendered into Court $20,000.00 in cash, and has offered to deposit $25,000.00 to guarantee curtailment of the operating losses shown in the Receiver's statements, and to pay interest on the appraised value of debtor's property when same should be determined, has offered to pay said appraised value in full, and has taken each and every step which it conceived would expedite this matter, or which the Court has suggested might expedite the same.

Debtor has been forced to work out his re-organization plans without the benefit of having its properties restored to its possession, and while the same was actually under the control of a receiver.

On the other hand, said American National Bank has not co-operated for the purpose of obtaining a speedy termination of this matter, but has stubbornly resisted every move made to that end, and, as a matter of fact, has announced in advance its opposition to any and all plans which might be submitted by the debtor, before it had any knowledge of what plan or plans or offers debtor would propose, which position has been taken with utter indifference to the rights and possible benefits of other creditors and interested parties in this proceeding.

VIII

Said alleged pleading is too vague, indefinite, and uncertain in its allegations to be made the basis of any decree or to permit the introduction of evidence in support thereof.

Wherefore, debtor moves that the instrument filed on October 7, by American National Bank, be ordered stricken from the record in this proceeding.

WHITE & HOWARD,
Attorneys.

Notary Public.

ORDER ALLOWING FILING OF DEBTOR'S PETITION

(Filed October 11, 1935)

The debtor, Tennessee Publishing Company, moved the Court for leave to file its petition with exhibits "A" to "H" inclusive, seeking to have the Court order the Clerk to file the Report of the Appraiser, filed in the Receivership case of C. O. Carpenter, etc., vs. Tennessee Publishing Company, filed in this cause, which motion was by the Court granted, and same was filed, subject to all legal defenses.

This the 11th day of October, 1935.
O.K.

GORE, Judge.

DEBTOR'S PETITION FOR FILING OF APPRAISER'S REPORT

(Filed October 11, 1935-

Comes debtor, Tennessee Publishing Company and files this its petition, after having obtained leave of Court so to do, and respectfully avers:

That heretofore it filed its original plan of re-organization under and in accordance with the Bankruptcy Act as amended by Section 77-B and which said plan was filed on July 13, 1935, to which reference is expressly made.

Thereafter, a supplemental or alternate plan of re-organization was filed on the ..... day of ....., 1935. In both said plans debtor sought to have the value of all its assets ascertained and judicially determined by the Court, either by a reference to a Master or by an appraisal. In this connection debtor specifically refers to paragraph 1 of said original and supplemental or alternate plan of re-organization, and asks that said supplemental or alternate plan be treated as a part hereof, as fully as if copied at length herein.

Therefter, a hearing was had at Monteagle, Tennessee, on July 13, 1935, and after considerable argument and discus-

sion of said plan of re-organization, and other matters germane thereto, as well as upon a motion for an order of sale made by certain bondholders of debtors, this Court stated:

"THE COURT:

I will tell you what I have in mind; it is going to protect you all right enough. Today they are making application for me to order a sale, and before I do it, I want an upset price and in the meantime, while we are getting an upset price—that has to be done before I can make an order of sale—if you can then assure me that you can protect these bondholders to the extent of the upset price of that property, then I will be awfully glad to entertain your plan. I am not dismissing your plan at this time, I am not doing that at all."

After some further discussion the following colloquy took place between the Court and counsel:

"THE COURT: All right. I am going to order a sale—not order a sale, I am going to order an appraisal today.

MR. NORVELL: What length of time?

THE COURT: How do you think we ought to get at the appraisal?

MR. SIMS: We will confer, there are companies who make appraisal.

THE COURT: You agree, if you can, upon appraisers, all of you, and if you cannot, submit the names to me and I will decide.

MR. NORVELL: You have decided the matter temporarily?

THE COURT: Yes.

MR. NORVELL: Something ought to be done with this property, I am not butting in, but let's don't let it rock along; I make this suggestion, if we can't agree on appraisers let us have a discussion at an early date, Tuesday or Wednesday, and if we don't agree submit it to your Honor.

MR. SIMS: There are people who regularly make appraisals of newspaper property.

THE COURT: I guess Mr. Carmack knows who they are.

MR. LEVY: Do I understand, in making this appraisal, this is a preliminary step to an order of sale?

THE COURT: I will use it for all purposes.

MR. NORVELL: Then I will ask your Honor, whether appraised by appraisers of your selection, or by agreement, Tuesday or Wednesday if we don't agree—make it as short a time as you can.

THE COURT: It ought to be sold. Can it be done in ten days?

MR. NORVELL: I say if we can't agree.

THE COURT: I will be in Nashville Thursday, I am going to get through at Winchester Wednesday and I will be in Nashville Thursday.

MR. STOKES: I understand the only order entered today is an order for appraisal and all other matters are reserved?

THE COURT: Yes, I will do that.

MR. SIMS: Your Honor is taking under advisement the order of sale until an order of appraisal comes in?

THE COURT: Yes, all other matters are held in abeyance until the appraisal is made."

Said hearing was had at Monteagle during which the above quoted colloquy took place on a Saturday and on the Thursday next following the hearing was resumed in the courtroom at Nashville, Tennessee.

Subsequent to the hearing at Monteagle and before the resumption of the hearing in Nashville, a conference was had between Hon. Cecil Sims, representing a large bondholder, Lewis S. Pope, Lawrence Howard, representing the debtor, and Mr. Stanley Horn, one of the proposed directors for the corporation under its re-organization plan. No agreement was reached at said conference concerning the selection of appraisers. It is averred that attorneys for debtor were present at said conference not in a capacity as attorneys for Tennessee Publishing Company in the case of C. O. Carpenter, Receiver, etc., vs. Tennessee Publishing Company, the same being the equity receivership case pending in this Honorable Court, but were acting solely and alone in their capacity as attorneys for the debtor in the pending reorganization proceeding styled in the caption hereof. In fact, neither of the attorneys present for this debtor had been employed in said receivership proceeding, nor was Mr. Stanley Horn

present in any capacity for the Debtor except in the re-organization thereof.

Thereafter, and at the appointed time the hearing adjourned at Monteagle was resumed at Nashville, Tennessee. Upon said hearing the Court was apprised of the fact that the parties were unable to agree upon the selection of appraisers, and counsel for debtor suggested and insisted that three appraisers be appointed to value the properties and assets of debtor, but upon objection being made to the number of appraisers by attorney for one of the large bondholders, which objection was concurred in by attorney for another large bondholder, it was finally determined to select one appraiser. To be more specific, debtor alleges that upon the suggestion and insistence of one of debtor's attorneys that three appraisers be appointed, Honorable W. E. Norvell, attorney for one of the large bondholders, stated in open court, in substance, that he was of the opinion that one appraiser would be better than three appraisers. Thereupon, Honorable Cecil Sims, attorney for another large bondholder, stated in substance, that he was of the same opinion as expressed by Mr. Norvell; whereupon, Lewis S. Pope, one of the attorneys for debtor, stated to the Court that while the debtor preferred the appraisal to be made by three appraisers, nevertheless in order to prevent delay debtor was willing to accede to the demands of opposing counsel and agreed that said appraisal be made by one appraiser. The Court being advised that counsel were unable to agree upon the selection of an appraiser requested the parties to furnish him names of newspaper publishers or owners in order that they might be communicated with by the Court for the purpose of learning the names of persons or companies who could best make said appraisal. It is averred that pursuant to said agreement made in open court, that said agreement was adopted by the court, as is evidenced by the fact that one appraiser was appointed, and, while said appraisal was actully ordered in the receivership case of C. O. Carpenter, Receiver, etc., vs Tennessee Publishing Company, the Court stated that said appraisal would be used both in said equity receivership cause and in this re-organization proceeding.

After the Court had been furnished the names of certain publishers and/or owners, as he requested, counsel for certain of the bondholders and for the debtor, the Court wrote with communications received from newspaper publishers from whom information had been requested concerning a suitable appraiser. Said letter, or a copy thereof, received by one of debtor's attorneys, is filed as Exhibit "A" to this

petition. Two days later the Court addressed another letter to counsel for the parties giving further information received concerning the appointment of an appraiser. Said letter is made Exhibit "B" to this petition.

Thereafter, a conference was had between Hon. Cecil Sims, counsel for a large bondholder, Laurence B. Howard and A. H. Roberts, of counsel for debtor, whereas an agreement was reached to the effect that all proposed appraisers with the exception of three be eliminated and the Court was furnished the three names from which it was agreed an appraiser might be selected. This information was communicated to the Court in a letter of July 26, 1935, opposing counsel being furnished a copy thereof, and a copy of which is made and filed as Exhibit "C" hereto.

It is further averred that such information was also communicated by letter written by Hon. Cecil Sims to the Court.

Mr. Carmack, president of debtor, was not present at said conference, but obtained information on the next day thereafter which made it inadvisable for the debtor to agree upon the selection of either of the three names theretofore submitted, and accordingly a telegram was sent to the Court on the next day after said conference, which telegram is as follows:

"Nashville, Tennessee,
July 27, 1935.

Judge John J. Gore,
Cookeville, Tennessee.

Information just received makes impossible agreement upon any of three names in Sims letter July twenty-six.

L. B. HOWARD."

The information mentioned in said telegram as just having been received was conveyed to the Court in a letter of July 27, a copy of which is filed as Exhibit "D" hereto.

Thereafter, the Court addressed a letter to Messrs. Sims, Norvell, Roberts & Roberts, under date of July 29, 1935, discussing the factors which the Court suggested should enter into the appraisal. A copy of said letter is made and filed as Exhibit "E" hereto.

In accordance with the foregoing understanding and agreement the Court appointed American Appraisal Company to appraise the assets and properties of debtor. This appointment of the one appraiser was not objected to and has not been objected to by bondholders or by anyone else con-

nected with this proceeding. It is further averred that subsequent to the appointment of American Appraisal Company as appraiser debtor prepared a petition seeking to have an appraisal made, not only of the property and assets of the debtor, but also of the alleged outstanding bonds against the property of debtor, and presented said petition to the Court at Cookeville, Tennessee, for filing. The filing of said petition was strenuously objected to by Hon. Cecil Sims, Hon. Harley Fowler, and Hon. W. E. Norvell. The objection of the attorneys for the bondholders and of Mr. Fowler, attorney for plaintiff in the receivership proceedings hereinbefore mentioned, was chiefly that an appraisal of the properties was then in progress and that the value of the bonds would be fixed and determined by the fixing of the value of the property included in the report. This view was concurred in by the Court and debtor was refused permission to file said petition, the Court stating, in substance, that the bonds could not be worth more than the property which secured their payment, and that it would serve no useful purpose to incur the additional expense at that time of ordering an appraisal of said alleged bonds, and that the same should await the coming in of the report of the appraiser.

On August 8, 1935, the Court addressed a letter to Lewis S. Pope, one of debtor's attorneys, concerning the hearing of two motions sought to be filed by debtor, one with reference to the appraisal of the property, and the other seeking to have a question relating to the constitutionality of Section 77-B disposed of. Said letter under date of August 8, 1935, is filed as Exhibit "F" hereto.

Said letter, Exhibit "F," was replied to by the addressee, and thereafter and on August 14, 1935, the Court wrote to Hon. Lit J. Pardue, Receiver of debtor, sending Lewis S. Pope a copy of said letter, which copy is made and filed as Exhibit "G" hereto.

Thereafter and on September 20, 1935, the report of the appraiser was filed wherein the physical plant properties and intangible assets were appraised at the sum of $295,585.18, all is shown by said report of the appraiser. It is averred that said report was filed in the receivership cause of C. O. Carpenter, Receiver, etc., vs. Tennessee Publishing Company, pending in this court.

Following the filing of said report of the appraiser in the receivership cause as aforesaid, attorneys for debtor prepared an order directing the filing of the report in this proceeding

in accordance with the previous understanding as hereinbefore set out. Upon said order being submitted to the Court the same was signed for entry by the Court but with direction to counsel for debtor to submit said order to opposing counsel in Nashville, Tennessee, before having the order entered by the Clerk. Upon presentation of said order to Hon. Cecil Sims and Hon. W. E. Norvell, attorneys for certain bondholders, said attorneys refused to sign same, and Mr. Norvell wrote a letter to the clerk of the court at Nashville, sending copies to the court and certain counsel, requesting that it be not entered until after they could be heard in opposition to its entry. Said letter is filed as Exhibit "H" hereto.

It is further alleged that in view of the foregoing facts, and particularly in view of the distinct agreement and understanding, and the subsequent course of dealings between all parties, the objecting creditors, (bondholders) are now estopped to insist that said appraisal was not made for all purposes, and that same should not be used in this proceeding to the same extent as in the aforesaid receivership cause. It is further alleged that if counsel for said objecting bondholders should be sustained in their present insistence that another appraisal will be necessary, that such would entail great expense and delay.

It is further averred that debtor is entitled to have said report of the appraiser filed in this proceeding and treated as an appraisal made pursuant to and in compliance with Section 77-B of the Bankruptcy Act.

PREMISES CONSIDERED, DEBTOR PRAYS:

That it be permitted to file this petition and that opportunity be given those parties adversely interested to make such defense hereto as may be proper, but said parties are expressly excused from answering under oath or seal, that being waived;

That the report of the appraiser filed in the receivership cause mentioned in the body of this petition, and which has been marked filed in this proceeding be treated in all respects

as having been made under Section 77-B of the Bankruptcy Act; and

For full and general relief.

WHITE & HOWARD
LEWIS S. POPE
ROBERTS & ROBERTS
Attorneys for Debtor.

STATE OF TENNESSEE
COUNTY OF DAVIDSON

Personally appeared before me, in and for said County and State Lewis S. Pope, Lawrence B. Howard, A. H. Roberts and A. H. Roberts, Jr., and being duly sworn make oath that they are attorneys for debtor herein, are familiar with the facts set out in the body of this petition, and that the same are true in substance and in fact.

A. H. ROBERTS
A. H. ROBERTS, JR.
LAURENCE B. HOWARD
LEWIS S. POPE

Subscribed and sworn to before me on this October 11, 1935.

(SEAL) E. L. DUDNEY, Clerk.
By F. G. SELTER, D. C.

Exhibits To Debtor's Petition For Filing Of Appraisal

EXHIBIT "A"

Honorable W. E. Norvell, Jr. July 22, 1935.
Nichol Building,
Honrorable Cecil Sims,
American Trust Building,
and

Re: C. O. Carpenter, vs.
Tennessee Publishing Company

Roberts & Roberts,
American Trust Building,
Nashville, Tennessee.
Gentlemen:

On last Thursday, I wrote a number of letters with a view of contacting someone whom I might employ to appraise the property of the Tennessee Publishing Company covered by the mortgage in this case.

Among others, I wrote Mr. Clark Howell, President, Atlanta Constitution, requesting that he suggest some

competent appraiser, and today I am in receipt of a letter from Mr. Howell, in which he states, some other things: "At any rate, I refer you to the firm of Palmer, Suter & Palmer, 350 Madison Avenue, New York, N. Y. This firm has had more experience in the matter of newspaper appraisals than any other firm in America. We have been dealing with them for a long time, and only a few years ago they made a complete appraisal of the Constitution. * * * I unhestatingly recommend this firm to you and I know of no other firm in the country who can do the job as well as they can, nor in which you can place more reliance."

Attached to Mr. Howell's letter, was a statement furnished by Palmer, Suter & Palmer, in which it is stated that "During recent years we have been retained in the valuation or sale (or both) of such important newspaper properties as" and then follows a list of fifty-five newspapers in the states of New York, Texas, Georgia, Alabama, Massachusetts, Pennsylvania, South Carolina, Illinois, Ohio, Michigan, Minnesota, West Virginia, California, Missouri, Otawa, Ontario, Vancouver, British Columbia and Winnipeg, Manitoba.

I am also in receipt of a letter from Mr. Wm. Rule, Jr., Knoxville, Tennessee, under date of July 20, in which he states that his services will be available at any time "after the latter part of the coming week."

I am also in receipt of a letter from Mr. Walter C. Johnson, Vice-President and General Manager of the Chattanooga News, in which he states it is impossible for him to do the work, and suggests that the appraisal "might well be made by some person or concern like Mr. Samuel P. Weston, who makes a business of appraisals of daily newspapers," but he does not give the address of Mr. Weston.

I am also in receipt of a letter from Mr. Emanuel Levy, Vice-President and General Manager of the Courier-Journal and Louisville Times, Louisville, Kentucky, who declines to do the work for us.

I am in receipt of a letter from Mr. S. N. Harrison, 407 Foster Street, Nashville, who, you will recall appeared before the Court on last Thursday, hence you know him. I also have a letter under date of July 19, signed by Mr. J. C. Thomas, written on the stationery of "The Dixie Electrotype Company, Nashville, Tennessee," recom-

mending Mr. Harrison as being very thorough in this particular line of business, and stating he had "made a number of appraisals for our company."

It is impossible for me to write all attorneys and parties interested, and believing that you gentlemen represent the divergent interests, I take it that this communication to you will be satisfactory. But, I would be glad if you will submit this letter to your clients and to other lawyers, interested in the case. I earnestly solicit your co-operation, and desire a thorough and fair appraisal at the earliest practicable moment, and if it be possible, for you gentlemen to assist me by agreeing upon an appraiser, it will be a personal favor.

Very truly yours,
JOHN J. GORE (Signed)

P. S. A later letter, from Mr. Don S. Elias, of the Ashville Citizen Times, gives the address of Mr. Weston referred to as located in New York, at the Graybar Building, and I have addressed a communication to him as of this date.

EXHIBIT "B"

Honorable W. E. Norvell, Jr., July 24, 1935.
Nichol Building,
Honorable Cecil Sims,
American Trust Building,
Re: Tennessee Publishing Co.
Roberts & Roberts,
American Trust Building,
Nashville, Tennessee.
Gentlemen:

I am in receipt of a letter under date of July 22, from Honorable Clark Howell, President and Editor of the Atlanta Constitution, recommending Mr. T. W. Branch, recently of Nashville, but now of Atlanta, as being competent to appraise the Tennesseean plant. Mr. Howell says that Mr. Branch made an audit of the Constitution some twelve or fifteen years ago, and that his work was entirely satisfactory.

I am also in receipt of a letter from Mr. James K. Parkes, of Foster, Parkes Company, Nashville, in which

he says that Mr. S. N. Harrison, of Nashville, has done appraisal work for them for a number of years, and "We think him very capable;" and also that Mr. Harrison has had wide experience in appraising newspaper plants; that he is an expert in appraising physical property of printing plants.

I also have a letter from Mr. E. A. Bergstorm, President of the Williams Printing Company, of Nashville, in which he says that Mr. Harrison made an appraisal of the physical equipment of their plant last January, and that they consider him to be a capable appraiser.

Respectfully,
JOHN J. GORE (Signed)

EXHIBIT "C"

Judge John J. Gore, July 26, 1935.
Cookeville, Tenn.
Dear Judge:

Re: Tennessee Publishing Company.

At a conference of the counsel interested in the appraisal of the properties of this corporation, it was agreed among us that three names, Mr. Aubrey Harwell of Birmingham, Kelly-Smith Co. of New York, and Samuel P. Weston of New York, are unobjectionable to us, in that we know nothing whatever about them. Some objection has been urged to all the other names contained in your letter to us, and hence the other persons named were eliminated, so far as we are concerned. In other words, we make no recommendation whatever as to the three names above mentioned, for want of knowledge regarding them.

Yours very truly,
ROBERTS & ROBERTS.

Copies to:
Mr. Sims,
Mr. Norvell

EXHIBIT "D"

Judge John J. Gore, July 27, 1935.
Cookeville, Tenn.
Dear Judge: Re: Tennessee Publishing Company

Mr. Carmack has just come in our office and states that he has been in the office of Kelly-Smith Company

of New York and has some knowledge of them, that they are strictly advertisers and not appraisers, and he does not think they are proper and suitable persons to be appointed to appraise this property.

Mr. Carmack also knows of Mr. Weston, who he says is a broker and not an appraiser.

Mr. Carmack says at this time he does not know Mr. Harwell of Birmingham, but that he is now making an investigation to ascertain who and what he is.

Copy of this letter is sent to Messrs. Sims and Norvell.

Yours very truly,
ROBERTS & ROBERTS.

AHR/MM

EXHIBIT "E" TO PETITION

Roberts & Roberts, July 29, 1935.
American Trust Building,
Honorable W. E. Norvell, Jr.,
Harr-- Nichol Building
and Re: Carpenter vs. Tennessee Publishing Company

Honorable Cecil Sims,
American Trust Building,
Nashville, Tennessee.

Gentlemen:

I am in receipt of a letter from a person who claims to be competent to appraise the property of the Tennessee Publishing Company, in which he says, among other things, that he will do the work for $1500; that "We will determine the fair value of the assets in the light of existing conditions, and in arriving at such fair value, the following factors will be given consideration:

Machinery and Equipment:

Cost of reproduction, utility, depreciation resulting from wear and tear, obsolescence and activity.

Newspaper Files, Library and Morgue:

Similar to above.

Circulation and Franchises:

To a profitable going concern these would be included as a part of good will. To a non-profitable concern

the value, (if any) would be based upon consideration of comparable transfers of like facilities throughout the country and with recognition of the local situation.

Good Will:

Balance sheets would be reconstructed upon the basis of an analysis of income and operating expenses for the purpose of forecasting future potentialities and after determining a fair return on the investment the surplus earnings would be capitalized to arrive at the good will, if any.

Our report would be compiled in comprehensive form containing a detailed itemization of major units of equipment and grouping of minor classifications, and explanatory details with reference to the treatment of the special items such as circulation, morgue, good will, etc."

And he also states that he is in position to take up the work promptly and will make and deliver his report in approximately three or four weeks thereafter.

The purpose of this letter is to know whether the foregoing items include all that is necessary to be considered and reported on by the appraiser.

I will thank you for a prompt reply.

Respectfully,
(Signed) JOHN J. GORE.

EXHIBIT "F"

August 8, 1935.

Honorable Lewis Pope,
514 Independent Life Building,
Nashville, Tennessee.

My dear Mr. Pope:

I am in receipt of your letter of yesterday, in which you state that "the attorneys representing the Tennessee Publishing Company have decided to file two motions; one with reference to the appraisal of the property and the other asking your Honor to dispose of the question of the constitutionality of Section 77B", and you enclose copies of the proposed motions, and state that you desire to have an early hearing on these motions,

and ask if I will indicate what date I can hear the motions, etc.

I do not know when I can hear these motions; I have cases set for trial every day during the remainder of this and next week except Saturday; these are jury cases and oral testimony will be offered, the juries are summoned and in attendance every day, and I suppose witnesses have been summoned also, so, you see it would be impossible to hear your motions on any day except Saturday. I cannot think when I have had a Saturday off.

I will be in Knoxville on the trial of a case for a week, beginning August 19; will resume the trial of my docket here on the 26th, and will conclude on the 27th or 28th, so, I might hear your motions on August 29, 30, or 31st.

I have read the copies of your proposed motions, one of which requests the "Court to dispose of the questions raised herein attacking and concerning the constitutionality of Section 77B of the General Bankruptcy Act, and for an order sustaining and upholding the constitutionality of said amendment to said Act." You know Mr. Sims filed a motion at a former hearing attacking the the constitutionality of Section 77B. I suppose that is the motion upon which you wish to invoke the action of the Court. I understand Mr. Sims is in Florida, and I have no information as to when he will return. I would not want to pass upon the constitutionality of any Act of Congress until I had had an opportunity to consider it, so I suggest that you submit to me a brief, giving Mr. Sims a copy and I will then request him to furnish a brief, giving you a copy, and I will consider the matter at the very first opportunity upon this question oral argument would, no doubt, be helpful, but I consider written briefs indispensible.

In regard to the other motion you desire to make pertaining to what should be embraced in the appraisal of the property: I would call your attention to the fact that before I employed an appraiser, and in fact, on July 29, I addressed a joint letter to Roberts & Roberts, whom I understood represented the debtor, or, at least parties instrumental in submitting the plan of reorganization, to Mr. W. E. Norvell, Jr., and Mr. Cecil Sims, whom I understood represented certain bondholders affected by the plan, in which I stated that I was in re-

ceipt of a letter from a person who claimed to be a competent to appraise the property, and that in his proposition of appraisal, he would consider certain factors, setting out the factors to be considered; in that letter I stated "The purpose of this letter is to know whether the foregoing items include all that is necessary to be considered and reported on by the appraisers." I received replies to that letter from Messers. Norvell and Sims, but did not receive a reply from Roberts & Roberts, or anyone associated with them in the case. I therefore, naturally concluded that the factors mentioned in the proposal were satisfactory to your client and to all persons interested in the plan of reorganization submitted.

I am informed that the mortgage covers all the property of the debtor, except such as was consumable in its use. I have never seen the mortgage. If it does not include all the property of the debtor, and there is any other property which should be included in the appraisal, I would be glad if you will call it to my attention, and I will then consider amending the contract with the appraiser, in order to have it embraced in his report.

I will do this upon request, which will save you then expense and trouble of a formal motion and a trip to Cookeville to argue it.

I want to cooperate with all parties concerned to the end that the property may be disposed of to the best advantage, in the most economical and expeditious manner.

Respectfully,
JOHN I. GORE (Signed)

EXHIBIT "G"

Honorable Lit J. Pardue, August 14, 1935.
Receiver, Tennessean,
Nashville, Tennessee.
Dear Mr. Pardue:

Enclosed is copy of a letter dated August 14, which I have just received from Honorable Lewis S. Pope, in Re: Tennesseean Publishing Company, debtor.

Please note the last paragraph on page 1, of his letter, where he says among other things: * * * I am informed that there is considerable property outside of the mort-

gage. For example, it is my information that all bills receivable are not included in the mortgage."

I understood that the property not covered by the mortgage was inconsequential. I will thank you to investigate this matter, and answer that portion of Mr. Pope's letter for me, sending me copy of your letter to him.

I believe, also, that all the property should be appraised, segragating that which is not covered by the mortgage.

You know Mr. Dover stated to us that he would give us as many copies of his audit as we desired: I believe it would be a good idea to have as many as a dozen or more copies, as prospective bidders might want to inspect it, and it would be very handy if we had them to submit if requested.

I am sending copy of this letter to Mr. Pope.

Respectfully,

August 14, 1935.

Mr. Lewis S. Pope,
514 Independent Life Building,
Nashville, Tennessee.

Dear Mr. Pope:

Enclosed is copy of letter I have just written to Mr. Pardue, which is self-explanatory.

Respectfully,
JOHN J. GORE (Signed)

EXHIBIT "H"

September 30, 1935.

Honorable E L. Dudney, Clerk,
United States District Court,
Nashville, Tennessee.

Dear Sir:

Re: Tennessee Publishing Company, Debtor—In Proceedings for the Reorganization of a Corporation. No. 17141.

Mr. Sims has just informed me that he had today learned from Mr. Pardue, the Receiver in the case of Carpenter, Receiver vs. Tennessee Publishing Company, that Mr. Pardue had a copy of a letter Judge Gore had

written Mr. Lewis Pope with reference to Judge Gore signing a decree for entry in the 77B case upon opposing counsel approving it, meaning, I suppose, Mr. Sims and myself as we are local attorneys representing bondholders. Mr. Sims got a copy of the proposed order from Governor Roberts, and same provides for a filing of the appraisal in the 77B case as of September 20, 1935, and makes recitals as to agreements, etc., that we do not recall.

I cannot approve this order and understand from Mr. Sims that he cannot either. So far as we know, the order has not been submitted to Mr. Waller or to Mr. Fowler or to Mr. Levy, who appeared for other bondholders.

Since we understand the Judge only intended that this order should be entered after our approval, please do **not** enter it if presented to you, as we desire to be heard before the order is entered. I gather from Mr. Sims' information as to Judge Gore's letter that the Judge regarded this order as more or less a formal one. Mr. Sims and I do not so regard it, and do not feel that the debtor is entitled to have this order entered, and we would like to call Judge Gore's attention to our position before he finally passes on it.

In order to save two communications, I am sending a copy of this letter to Judge Gore, and may say that Mr. Sims is in my office and concurs with what I am writing.

Yours very truly,

WEN/m

CC Hon. John J. Gore,
Gov. A. H. Roberts
Mr. Cecil Sims

ANSWER OF RECEIVERS OF MINNESOTA & ONTARIO PAPER CO.

(Filed October 14, 1935)

R H. M. Robinson and C. T. Jaffray, Receivers of the Minnesota & Ontario Paper Company, a corporation under laws of Maine, with its principal office in Minneapolis, Minnesota, acting as such Receivers under decree of the District Court of the United States, for the District of Minnesota, Fourth Division, now come, and on behalf of the said Minnesota & Ontario Paper Company, confirm the position taken by their counsel in open court, at the hearing of this matter in Monteagle, Tennessee, on the 13th day of July, 1935, and respectfully state and show to the Court:

1. That Minnesota & Ontario Paper Company has a claim, which has been allowed by the Special Master, against the Tennessee Publishing Company, the sum of $121,494.00.

2. That they are unwilling to consent to, or participate in, the plan of re-organization of Tennessee Publishing Company, which has been submitted to the Court, not deeming the same practicable.

3. That they believe that the receivership should be ended, and the property, which is subject to sale, should now be sold under the orders of the Court.

CHARLES C. TRABUE,
THOMAS H. MALONE,
Attorneys for Receivers.

ORDER ALLOWING FILING OF PETITION

(Entered Oct. 14, 1935)

In this cause, debtor, Tennessee Publishing Company presented and was given leave to file its petition explanatory of the facts and circumstances surrounding the filing of its petition for reorganization, and all parties hereto adversely interested are allowed ten days hereafter in which to file answer thereto.

This the 14th day of October, 1935.

GORE, Judge.

EXPLANATORY PETITION OF DEBTOR
(Filed October 14, 1935)

To The Honorable John J. Gore, Judge:

Comes the debtor, Tennessee Publishing Company, a Tennessee corporation, not waiving but relying upon its motion to strike the so-called amended and supplemental answer filed herein by American National Bank on October 10, 1935, but fully relying thereon pending the argument of the motion of alleged bondholders of debtor corporation to dismiss the petition filed by debtor on June 6, 1935, for want of good faith, and presents this pleading by way of more fully setting forth the facts surrounding the filing of said petition of June 6, 1935, leading up thereto, and the objects and purposes of debtor and its officers and stockholders with respect to the conduct and operation of debtor corporation under the re-organization plan proposed, and that the Court may further understand the matters leading up to, included in and proposed purposes of the debtor in its plan of re-organization, and respectfully show to the Court:

I

That E. W. Carmack, Jr., is now the President of debtor corporation and the holder in his own name of all the common stock of the debtor corporation, although, in fact, he had made arrangements with certain financial interests by which other persons interested with debtor corporation and with said Carmack in the re-organization of the debtor corporation, and for the purpose of securing new money for the purpose of providing a sufficient operating fund or capital with which to operate debtor corporation after its re-organization, and also for the purpose of infusing new blood into the life of debtor corporation, and for the purpose of raising funds sufficient to comply with such orders as this Court may make with respect to the consummation of the re-organization plan submitted.

That is to say, that by the arrangement above mentioned under which other persons now have a valid and subsisting interest in said common stock standing in the name of E. W. Carmack, Jr., under which arrangement experienced and capable business men and newspaper men are to become actively connected with the operation of debtor corporation, as soon as the re-organization plan is approved by the Court, and are to furnish funds both for the purpose of complying with the orders of the Court in connection with the reorgani-

zation plan, and also funds sufficient adequately and properly to carry on the business of debtor corporation by the publication of a daily newspaper or newspapers in Nashville.

II

That at and prior to the date of the death of Senator E. W. Carmack, father of E. W. Carmack, Jr., who is now President of debtor corporation, Senator Carmack was Editor in Chief of the Nashville Tennessean, the paper then and now published by debtor corporation, and was at the same time the owner of some of its stock. Numerous friends and relatives of Senator Carmack also owned stock in debtor corporation at that time, and were caused to invest in said stock by Senator Carmack and because of his connection with said paper. After his death on November 9, 1908, this stock was held by his widow, the mother of E. W. Carmack, Jr., for some time and was later surrendered and preferred stock was issued to her to take up the common stock which had been held by her husband, Senator Carmack. This preferred stock was issued to the widow of Senator Carmack, and mother of E. W. Carmack, Jr., and so remained until about ten or eleven years ago when, for satisfactory reasons to said widow she surrendered her stock upon condition that such preferred stock be issued to and held by her first cousin, Frank D. Lander, an experienced newspaper man, who was in better position to safeguard the rights of widow than she was. And said preferred stock, in the amount of $15,000.00, which was really the property of the widow and E. W. Carmack, Jr., as the only distributees of the estate of Senator E. W. Carmack, deceased, who left only one child, E. W. Carmack, Jr. The affidavit of Frank D. Lander in support of this statement is filed herewith as Exhibit "A" hereto, and part hereof, as fully as if set out at length herein.

For a great many years neither the widow of Senator Carmack nor his son, nor anyone else for them, received any dividends whatever on said preferred stock in debtor corporation, although they were entitled to such dividends over a period of many years, as is verily believed.

III

More than a year before the filing of the receivership bill in this Court by C. O. Carpenter, Receiver, in March 1933, E. W. Carmack, Jr., began to devise plans to acquire a further interest in the properties of debtor corporation to the end that he might become Editor in Chief of the papers published by debtor, which position he very much desired, not

only because it was a position held by his father, but because he had good reasons to believe that said papers could be made a paying proposition by proper and economical management. He continued his efforts to secure a further interest in said property, having at all times in mind the fixed purpose of becoming Editor of the paper and to establish it as a profitable business enterprise and at the same time protect its creditors and stockholders and afford an opportunity to render a service to the people of the State who had signally honored his father. He made many efforts to realize on the interests held by himself and his mother, and these efforts continued almost continuously until they culminated in the acquisition of all the common stock held by Colonel Luke Lea and others. During these negotiations E. W. Carmack, Jr., made several trips to New York to confer with financiers interested in financing such a proposition, and finally after the receivership he sought out Mr. Paul Davis, President of the American National Bank, and in the presence of a reputable attorney of Nashville, Tennessee, a member of a firm now representing one of the alleged bondholders of debtor corporation, discussed this question with Mr. Davis. In that conversation the latter stated, in substance, that he was not interested in discussing the subject about which Mr. Carmack approached him relative to the Tennessean, that he, or interests whom he represented, preferred to keep such interests as they had in the paper, and would, to use Mr. Davis' exact expression to the best of Mr. Carmack's recollection, "We will feed it $100,000.00, if necessary,"—meaning, as Mr. Carmack understood it, that Mr. Davis and associated interests would spend $100,000.00 in supporting the Nashville Tennessean rather than entertain any suggestions for sale or re-organization of same which Mr. Carmack might propose.

IV

These efforts of E. W. Carmack, Jr., were continued, in one form or another, with the same objects in view, as above shown, until the spring of 1935, when he began negotiations with certain representatives of Colonel Luke Lea for the acquisition of the common stock of debtor corporation held by said Luke Lea, which negotiations continued over a period of time until they were consummated early in June 1935, immediately prior to the filing of the petition of June 6, 1935. On June 5, 1935, a meeting of the stockholders of debtor corporation was held, when Luke Lea, Jr., then the holder of the common stock of his father, Colonel Lea, in furtherance of the trade which had been made by said Carmack,

voted his father's stock under a power of attorney authorizing him so to do, at which meeting E. W. Carmack, Jr., was elected President of debtor corporation. He could not get possession of the stock books of debtor corporation, which were presumably in the hands of the Receiver of this court in the case of C. O. Carpenter, Receiver, v. Tennessee Publishing Co., and was reduced to the necessity of getting an order from this Court to get permission to transfer the stock from the name of Colonel Lea and others to that of E. W. Carmack, Jr., which was finally consummated early in July, 1935, a few days after the filing of the petition. At the meeting of June 5, 1935, a Board of Directors was first elected by the stockholders present and this Board of Directors formally elected the officers of the corporation, including E. W. Carmack, Jr., President, and both in the meeting of the stockholders and in the meeting of the Directors, action was taken authorizing and directing the filing of the petition for the re-organization of debtor corporation which was sought by the petition filed on June 6, 1935.

V

E. W. Carmack, Jr., is a newspaper man by education, training and experience. He is now the Editor and Manager of a daily newspaper published at Murfreesboro, Tenn., over which he assumed the management over two years ago, at a time when it was losing money heavily, and notwithstanding the depression he has converted said paper into a prosperous and profitable business enterprise which is now making money. Prior to that time he had had considerable newspaper experience. It is now believed by his associates that he has the capacity to make the Tennessean papers likewise profitable to the stockholders under the re-organization plan, and thereby improve the condition of its creditors.

VI

Debtor further states that E. W. Carmack, Jr., acquired the common stock of debtor corporation from Colonel Luke Lea for a valuable consideration agreed upon between E. W. Carmack, Jr., and representatives of Colonel Luke Lea.

VII

As a further evidence of the good faith of debtor corporation and of its officers and those interested in the re-organization plan proposed by it, it is respectfully stated that debtor through its counsel has been very diligent in its efforts to comply with section 77-B, and with the orders of

the court in this case, and to expedite the hearing on its petition for re-organization, and has at all times and is now ready, willing and able to comply with any reasonable orders of the Court with respect to carrying out its said proposed plan of re-organization and the payment of the fair and reasonable appraised value of the properties of the debtor as same may be adjudicated by the Court.

VIII

Since the properties claimed by alleged bondholders to be covered by their said bonds have been appraised by order of Your Honor, and certain properties not covered by the alleged deed of trust to secure bondholders have likewise been appraised under the orders of the Court, debtor now stands ready, willing and able to take said properties at said appraised value and pay for same in cash within a reasonable time under the orders of the Court in this case.

By way of further explanation, there are other properties now owned by debtor corporation, such as accounts receivable, etc., which are not necessary to the operation of its newspaper, which properties debtor stands ready, willing and able to take at a fair and reasonable value, or same may be excluded from the re-organization plan if deemed by the Court to be to the best interests of all parties concerned.

PREMISES CONSIDERED, DEBTOR PRAYS:

That it be permitted to file this pleading as explanatory of the object and purpose of the filing and presentation of its re-organization plan herein and that it be permitted to effect a re-organization of said corporation in accordance with the plan and amended plan heretofore proposed, and for full and general relief.

LEWIS S. POPE
WHITE & HOWARD
ROBERTS & ROBERTS,
Attorneys for Debtor.

AFFIDAVITS TO EXPLANATORY PETITION

STATE OF TENNESSEE
COUNTY OF DAVIDSON

Comes E. W. Carmack, Jr., who makes oath in due form of law that he is President of debtor corporation, Tennessee Publishing Company, and that the facts stated in the foregoing pleading as upon knowledge are true, and those stated upon advice, information and belief, he verily believes to be true.

E. W. CARMACK, JR.

Subscribed and sworn to before me on this October 14, 1935.

(SEAL) MAYVER MOORE,
Notary Public.

My Commission expires May 10, 1938.

AFFIDAVIT OF FRANK D. LANDER
(Filed October 14, 1935)

Comes Frank D. Lander who makes oath in due form of law that he is a first cousin to the widow of Senator E. W. Carmack, deceased, who is the mother of E. W. Carmack, Jr., President of Tennessee Publishing Company. He further states that some years ago he agreed to act as Trustee for Mrs. E. W. Carmack and her son E. W. Carmack, Jr., in the matter of having issued to him $15,000.00 of the preferred stock of Tennessee Publishing Company, which he now holds as Trustee for Mrs. Carmack and her son, and has held for several years as Trustee for them, and not in his own right.

FRANK D. LANDER.

Subscribed and sworn to before me on this October 14, 1935.

(SEAL) MARY C. MAMMARELLI,
Notary Public.

My Commission expires 14th day of July, 1936.

SUPPLEMENTAL ANSWER OF C. O. CARPENTER, RECEIVER OF THE HOLSTON-UNION NATIONAL BANK

(Filed October 14, 1935)

Since the filing of the answer herein of C. O. Carpenter, Receiver of the Holston-Union National Bank the petitioner has filed a plan of re-organization and also a supplemental plan to which reference is here made. It is denied that the plan as thus presented could or should be adopted, for the reasons following:

1. In the equity cause of C. O. Carpenter, Receiver vs. Tennessee Publishing Company, referred to in the pleadings, Paul M. Davis, a citizen of Nashville, has offered to pay $400,000 for the assets of the Tennessee Publishing Company which are encumbered by the trust deed securing the bond issue, a part of which bonds is owned by respondent. It is proposed by said Paul M. Davis that a sale be made to him of said assets for said consideration, or else that a public sale of the property be had of the amount offered by him to be treated as an upset price, that is, a price at which the bidding could be started.

2. That none of the bondholders secured by said trust deed have accepted said plan but that all are opposed to it and accordingly the enforcement by the Court of this plan of reorganization upon the bondholders would be depriving this respondent and the other bondholders of property without due process of law, which action of the Court would be violative of the Fifth Amedment of the Constitution of the United States.

C. O. CARPENTER, Receiver of The Holston-Union National Bank.

By H. G. FOWLER, Attorney.

FOWLER & FOWLER, Solicitors.

Amended Plan Of Reorganization

Order Allowing American National Bank To File Supplemental Answer

AMENDED PLAN OF REORGANIZATION

(Filed October 15, 1935)

Comes the Debtor, Tennessee Publishing Company, and amends its plan of reorganization as heretofore filed, as follows:

(1) The Debtor offers to pay in cash on such reasonable terms and conditions as the Court may fix, the entire amount of the appraised value of the property of the Debtor Corporation, as the same may judicially be determined by this Court or the appraised actual cash value of all valid interests, claims or liens on any of debtor's property when judicially determined. Said payment to be made into court or under such other arrangement as the Court may hereafter direct. Or if the Court so direct.

(2) The Debtor offers to pay in cash under the conditions and terms set out in paragraph (1) above, the appraised value of the property as judicially determined by this Court, covered in the recent appraisal of the American Appraisal Company and described therein as "Property covered by the mortgage and/or deed of trust," and to leave for liquidation in an manner deemed suitable by the Court the remaining property of the Tennessee Publishing Company.

(3) This amendment to the plan of reorganization heretofore filed in this cause shall, if the Court so order, supersede and subplant all provisions in any plans of reorganization heretofore submitted by the Debtor, insofar as said plans of reorganization may be in conflict herewith, but no further or otherwise.

TENNESSEE PUBLISHING CO.
By E. W. CARMACK, JR.,
President.

ORDER ALLOWING AMERICAN NATIONAL BANK TO FILE AMENDED AND SUPPLEMENTAL ANSWER

(Filed October 16, 1935)

For good cause shown and on motion of Cecil Sims, Attorney, American National Bank is granted leave to file an amended and supplemental answer and motion to dismiss

the petition, and it appearing to the court that such amended and supplemental answer and motion have heretofore been filed with the clerk on the ..... day of October, 1935, this order is entered nunc pro tunc and the motion made by the petitioner to strike said pleading is disallowed.

GORE, Judge.

ORDER UPON PETITION OF DEBTOR THAT COPY OF APPRAISAL BE FILED

(Entered Oct. 16, 1935)

This cause came on to be heard upon the petition of the debtor that a copy of the appraisal of the American Appraisal Company filed in the Receivership or General Creditors case of C. O. Carpenter, Receiver, vs. Tennessee Publishing Company, and that the bondholders be held estopped to except to, or question, said apprisal on the ground that there was only one appraiser appointed, instead of three, and the Court finding that W. E. Norvell, Jr., representing certain of the bondholders had urged and insisted in open court that there should be only one appraiser and Cecil Sims representing certain other bondholders, had made, or acquiesced in the same insistence..

It is ordered, adjudged and decreed that the said appraisal of the American Appraisal Company, heretofore filed in the said Receivership case shall be immediately filed by the Clerk in this cause by the manual filing of a copy or counterpart thereof and that the same shall be filed as the official appraisal in this case and that the bondholders are estopped to question or except to said appraisal on the ground that same should have been made by more than one appraiser.

Upon application of bondholders, represented by W. E. Norvell, Jr., and Cecil Sims, and for good cause shown it is further ordered that exceptions to the said report, other than any based on the fact that same was made by one appraiser instead of three, and any other proceedings looking toward the judicial establishment of value, may be filed at any time

prior to such date for the filing thereof as the Court may hereafter fix.

To the above report of said order made on the application of debtor, the bondholders except, and to the above portion of the order made on application of the bondholder the debtor excepts, the debtor excepts because the rules made governing the action of the Court in such matters provide how such exceptions may be made to the report, and there is no reason why said rules should not be enforced, and if the bondholders have exceptions they desire to file to the appraisal, they should do so within the time fixed by the Court.

This the 16th day of October, 1935.

GORE, Judge.

Approved as to form:

BASS, BERRY & SIMS
W. E. NORVELL, JR.
LEWIS S. POPE,
Attorneys for Debtor.

ROBERTS & ROBERTS, Sols.

EXCEPTIONS OF C. O. CARPENTER, RECEIVER OF THE HOLSTON-UNION NATIONAL BANK, TO THE ORDER ENTERED HEREIN ON OCTOBER 16, 1935, AUTHORIZING AN APPRAISAL OF THE AMERICAN APPRAISAL COMPANY TO BE FILED IN THIS CAUSE

(Filed October 19, 1935)

C. O. Carpenter, Receiver of the Holston-Union National Bank, of Knoxville, Tennessee, respectfully shows to the Court that he is the owner and holder of bonds in the principal amount of $28,000.00 of Tennessee Publishing Company secured by a trust deed creating a first lien upon the mortgaged property, and that he excepts to the order entered

herein on October 16, 1935, authorizing the filing herein of the appraisal made by the American Appraisal Company, upon the grounds following, to-wit:

1. Said appraisal was ordered to be made by this Court in a cause pending herein styled C. O. Carpenter, Receiver vs. Tennessee Publishing Company, being Cause No. 546 in Equity, and was not ordered to be made in this couse.

2. Said appraisal was not made by three disinterested appraisers, but instead was made by a corporation acting through its agent or agents, and accordingly is not such an appraisal as is contemplated be made under the provisions of Section 77B of the Bankruptcy Act.

3. C. O. Carpenter, Receiver, did not consent to the filing of said appraisal or a copy thereof in this cause; he did not agree that said appraisal would be considered as having been made in this cause; he did not agree that it should be treated as such an appraisal as was contemplated by Section 77B of the Bankruptcy Act; nor did he agree to the designation of one appraiser instead of three, as provided for by the Bankruptcy Act; and C. O. Carpenter, Receiver, has done nothing to estop him from asserting any and all objections to the entry of said order herein and to said appraisal and the filing thereof in this cause.

4. Said appraisal should not have been filed in this cause for the reason that the proceedings were opposed in good faith by a majority of all the bondholders, and were opposed in good faith by a majority of all of the general creditors, and it has accordingly at all times been apparent that a sufficient number of such bondholders and creditors would not join in said plan of reorganization to make it possible for the Court to adopt it.

5. No plan as contemplated by Section 77B of the Bankruptcy Act was offered by the debtor in this case and for that reason no appraisal should have been filed herein.

6. Inasmuch as the alleged plan of reorganization as proposed herein by the debtor was opposed in good faith by a majority of bondholders and a majority of general creditors, the acceptance by the Court of the plan of reorganization would have been depriving C. O. Carpenter, Receiver, and the other bondholders, of property without due process of law, which action of the Court would be violative of the Fifth Amendment of the Constitution of the United States and

the Court should so hold, and having so held the petition of the debtor should be dismissed without further proceedings with respect to the filing of an appraisal. In other words, the action of the debtor being violative of the provisions of the Constitution of the United States referred to, there is no need of going further.

C. O. CARPENTER, Receiver of The Holston-Union National Bank.
By H. G. FOWLER,

FOWLER & FOWLER — Attorney.
Solicitors.

EXCEPTIONS OF C. O. CARPENTER, RECEIVER OF THE HOLSTON-UNION NATIONAL BANK, TO THE APPRAISAL OF THE AMERICAN APPRAISAL COMPANY FILED IN THIS CAUSE ON OCTOBER 16, 1935

(Filed October 19, 1935)

C. O. Carpenter, Receiver of the Holston-Union National Bank, of Knoxville, Tennessee, respectfully shows to the Court that he is the owner and holder of $28,000.00 par value of bonds of the Tennessee Publishing Company secured by a trust deed creating a first lien upon the mortgaged property, and that he excepts to the appraisal of the American Appraisal Company filed in this cause on October 16, 1935, upon the following grounds, to-wit:

1. Said appraisal is erroneous in that it does not give sufficient value to the assets of the debtor. The assets of the debtor are worth more than is stated in the appraisal.

2. Said appraisal should be wholly disregarded by the Court for the reason that an offer of $400,000.00 for the mortgaged property and $40,000.00 for the unencumbered property has been made by Paul M. Davis, a reputable citizen of Da-

vidson County, Tennessee, which offer greatly exceeds in amount the value of the assets of the debtor as fixed in said appraisal. While said offer was made in the cause of C. O. Carpenter, Receiver vs. Tennessee Publishing Company, pending in this Court, wherein the assets of the Tennessee Publishing Company are being administered, yet it has been made known to the Court in this cause and a copy thereof exhibited to the amended answer of the American Trust Company. It is offered by said Paul M. Davis to start the biddings at the sums mentioned and it is shown to the Court that there are several other persons who have indicated a willingness to pay substantially more for the assets of the defendant company than offered by said Paul M. Davis.

3. The methods used by the appraiser and the elements taken into consideration in fixing the value of said assets were erroneous.

C. O. Carpenter, Receiver, is filing exceptions to the order authorizing said appraisals to be filed in this cause and by filing these exceptions to the appraisal he does not waive the exceptions made by him to the order authorizing the filing thereof herein, but at all times relies upon said exceptions.

C. O. CARPENTER, Receiver of The Holston-Union National Bank,

FOWLER & FOWLER
Solicitors.

By H. G. FOWLER,
Attorney.

EXCEPTIONS OF O. H. INGRAM TO ORDER AUTHORIZING APPRAISAL OF AMERICAN APPRAISING COMPANY TO BE FILED IN THIS CAUSE

(Filed October 23, 1935)

Comes O. H. Ingram, owner and holder of bonds in the principal amount of $60,000.00 of Tennessee Publishing Company, debtor herein, and excepts to the order authorizing the

filing in this cause of the appraisal made by the American Appraisal Company upon the following grounds, to-wit:

1. Said appraisal was not made by three disinterested appraisers and accordingly is not such an appraisal as is contemplated under the provisions of Section 77B of the Bankruptcy Act.

2. Said appraisal was not ordered to be made in this cause, but was made in the equity receivership proceeding styled C. O. Carpenter, Receiver, vs. Tennessee Publishing Company, No. 546 in Equity.

O. H. INGRAM,

By PITTS, McCONNICO, HATCHER & WALLER,
Attorneys.

ORDER FOR FILATION OF THIRD PLAN OF REORGANIZATION

(Entered October 23, 1935)

Comes the debtor, Tennessee Publishing Company, and presents to the Court a further or additional plan of reorganization, and asks leave to file same, which is granted, and same is this day filed.

To which action of the Court American National Bank, Paul M. Davis, O. H. Ingram, C. O. Carpenter, Receiver, Holston-Union National Bank, except, and Broadway Discount Corporation, Commerce Union Bank, pledgee, and W. G. Bush & Company, reserve the right to except.

This the 23rd day of October, 1935.

GORE, Judge.

O. K. for Entry:
BASS, BERRY, SIMS, Attorneys
W. E. NORVELL, JR.
PITTS, McCONNICO, HATCHER & WALLER
WHITE & HOWARD
ROBERTS & ROBERTS
LEWIS S. POPE,
For Debtor.

THIRD PLAN OF RE-ORGANIZATION

(Filed October 23, 1935)

Comes the debtor, not waiving, abandoning, or in any way reflecting upon the plan of re-organization heretofore offered in this cause, and which the Court held to have been filed in good faith, and a plan that appealed to the Court as feasible and workable; and that the debtor was able in the Court's opinion to carry out; and would have been pleased to have approved, except for the fact that it was the Court's opinion that the plan so submitted by the debtor, and if effected as provided therein, would violate substantive vested rights in the property of the secured creditors herein, on account of the fact that two-thirds thereof had not approved the plan; and that, on that account, the Court thought that it violated the Fifth Amendment of the Constitution of the United States.

Now, not waving any of the rights that the debtor has of appeal, or otherwise herein, from the decision of the Court, as above stated; but, on the contrary, preserving all of debtor's rights with reference thereto.

However, the debtor being so anxious to bring about a reorganization of its affairs, and to stop the loss resulting from the operation of its affairs, as now being operated by a Receiver in another cause in this Court; and, if possible, seeking to comply with the Court's ruling with reference to the constitutional rights of the creditors herein, and especially the secured creditors; and, the Court having held, in its opinion, delivered on the 15th day of October, 1935, with reference to the plan of re-organization before the Court at that time, that, if the plan had provided for a retention by the debtor of its property, subject to the interest, claims or liens of the secured creditors, that, in the Court's opinion, would have been constitutional, and would have violated no rights of the secured creditors. Therefore, the debtor submits the following plan of reorganization:

I

The debtor will take over the operation of its affairs, the expense of operating the same, taking the property subject to all legal liens, to the full amount that the Court determines due the holders thereof. This applying to all property of debtor, which is included in the mortgage, to secure an outstanding bond issue. If the holders of the securities, so secured by said mortgage, are willing to accept eighty cents on the dollar of the face value of the bonds so held by them,

which would make a total of six hundred thousand dollars ($600,000.000) outstanding against the debtor and certain of its property, the debtor is willing to accept this amount as due, and retain its property, subject to this mortgage for that amount. The Court to fix a reasonable rate of interest for debtor to pay on said six hundred thousand dollars, in the hands of the secured creditors, until the same is matured and paid.

In the event that it should occur that certain ones of the holders of said securities or bonds, are willing to accept eighty cents on the dollar of the face value of their bonds, and certain other ones of the holders of said securities are not willing, in that event, the debtor is willing and proposes to fix the amount due those, who are willing to accept eighty cents on the dollar as the amount due them, the present mortgage to secure them, and to have the Court to determine the amount due the other holders of the outstanding bonds, who do not agree to take eighty cents on the dollar of the face value of their bonds; and, when the same is so judicially fixed, declared and adjudged by the Court, in each individual case of the holders, the debtor will retain its property, subject to said amount, so fixed by the Court to be due and secured by the mortgage on certain of its property. And, then, the plan provides for a reasonable rate of interest to be fixed by the Court to be paid to said bondholders, upon the amount so fixed as above provided.

The debtor suggests eighty cents, as above provided, because; in the first place, it is more than the bondholders, according to their own representatives' admission in Court, numerous times, could realize from a sale of the property, at this time. And, again, because certain of the bondholders have proposed, in open Court, to take eighty cents on the dollar for their bonds. And, again, because many of the outstanding bonds, as debtor is informed, have been bought by the present holders for much less than eighty cents on the dollar of the face value of the bonds. And, that an alleged recent purchaser of a large block of the bonds, only claims to have paid or agreed to pay eighty cents on the dollar of the face value of the bonds. But, if the holders are not willing to take this amount, as herein proposed, in that event, the debtor herein proposes to take its property subject to their liens to secure whatever amount the Court determines is due them.

II

There are certain properties and assets, belonging to the

debtor, which are not included in the mortgage, which naturally fit in with the operation of the debtor's business, and which probably are worth more as they are utilized in the operation of debtor's business than they would be to an individual purchaser; and, some suggestion having been made, in open Court, that they have a value of Forty Thousand Dollars ($40,000.00), debtor proposes to the Court, in addition to taking the property covered by the mortgage, subject to the lien, as provided in No. 1 hereto, that it will also take over the properties and assets of debtor, not included in the mortgage, and will pay into the Court, the sum of $40,000.00 cash therefor, to be paid in a reasonable time to be fixed by the Court.

III

It is further a part of the plan here submitted, that, if the secured creditors agree to take eighty cents on the dollar of the face value of their bonds; or, if they decline to accept said proposition, and the Court, as provided in this plan, determines the amount due on said bonds; that, after the amount is so determined, in either manner above suggested, and the owners thereof are determined, that, then, the time of payment be extended to some reasonable time fixed by the Court. And, what appears to the debtor as would be reasonable time, is the original time fixed in the face of the bonds and in the mortgage, as their dates of maturity; and that a reasonable rate of interest be fixed by the Court to be paid by the debtor from that time on.

Debtor proposes to further protect the holders of the bonds secured by the lien, by paying to them, after the amount and rate of interest is fixed by the Court, as above provided, the interest in advance for a period of three months; and to guarantee to the Court, and to the bondholders or secured creditors, that this interest will be paid, the sum of Ten Thousand Dollars ($10,000.00), to take care of the interest for the first three months on said bonds will be immediately paid into Court, or into some bank, according to the orders of the Court, to be used for the payment of the interest for the first three months after, the re-organization plan is adopted and the properties are returned to the debtor.

Debtor is perfectly willing for it to be a part of the plan, that is, the terms and conditions thereof, that, at any time, it does not pay the interest on said bonds in advance, for a period of ninety days, that the whole of said outstanding issue shall become due and collectible and be foreclosed under the

terms of the mortgage, as modified by the decree of the Court in this cause.

In addition to the above, debtor will arrange its own operating expenses to carry on the operation of the business of debtor, without calling upon the Court for any financial aid and assistance.

Debtor has made considerable investigation of the present operating expenses of its affairs, and of all of its business, and is thoroughly convinced that large savings can be had in carrying on and operating its business, and, in no way affect or lower the efficiency; and, that it can, and will, carry on its affairs, and publish the papers which are now being published, at a very material reduction in cost, and in such a manner as to return good profits, and make of it a gainful and profitable business.

IV

As soon as it is definitely determined how much will be paid the unsecured creditors from the proceeds of the sale of the proposed bond issue, as above set out, debtor will issue class "A" preferred stock in sufficient amounts, at the par value of $10.00 per share, to make up the deficit, if any shall exist between the total amount paid, or to be paid the unsecured creditors, and the sum of One Hundred Thousand Dollars ($100,000.00) to be divided ratably among such unsecured creditors. Such preferred stock, class "A," shall bear a fixed dividend of six per cent. (6%) per annum, and shall be non-cumulative and non-voting, and shall be callable at any dividend payment date, at par value thereof, plus earned dividends of the year in which called.

V

As soon as it is definitely determined how much will be paid the preferred stockholders from the proceeds of the sale of the proposed bond issue, as above set out, debtor will issue class "B" preferred stock in sufficient amounts, at the par value of One Dollar ($1.00) per share, to make up the deficit, if any shall exist, between the total amount paid, or to be paid the preferred stockholders, and the sum of Twenty-Five Thousand ($25,000.00) Dollars, to be divided ratably among such preferred stockholders upon the surrender of their present certificates.

Such preferred stock, Class "B", shall bear a fixed dividend of five per cent. (5%) per annum, and shall be non-cumulative

and non-voting, and shall be callable at any dividend payment date, at par value thereof, plus earned dividends of the year in which called.

VI

With reference to the amount due to the holders of the bonds in this case, that it, what is spoken of in the plan hereinbefore as face value, this, of course, contemplates that the Court fix the amount due each and all of the bondholders, in the event they do not agree to accept the plan at eighty cents on the dollar of the face value as it now stands.

The Debtor states to the Court that it is reliably informed; from information it has recently acquired, that, if the said outstanding bonds are valid at all to any amount, that it is impossible for the debtor to know, or to intelligently determine in any reliable manner as to what amount is or may be due thereon. As evidence of the debtor's inability to know or to find out what amounts are due on the bonds, if any, it is well to apprize the Court of certain facts relative to the bonds, which debtor has every reason to believe are reliable.

The debtor is informed, which it thinks to be accurate, that one block of the bonds to the amount of Sixty Thousand Dollars were purchased by the present holder thereof at twenty-five cents on the dollar, and that said purchase was made after the Receivership case was filed herein, and the insolvency of the debtor corporation was generally and well known and known to the purchaser of said block of bonds.

Also, within the last few days, Mr. Paul M. Davis claims to have bought or optioned Two Hundred and Fifty Thousand Dollars of the bonds, and only claims to have paid, or agreed to pay eighty cents on the dollar. Debtor is reliably informed that he only has an option on said bonds, and that he agreed to pay such an amount therefor, as was finally determined in this case that the property covered by the bonds was worth; but, not to exceed eighty cents on the dollar of the face value. Mr. Davis, who claims to be the holder of these bonds is thoroughly familiar with the happenings in this case, having been present at the different hearings under the petition in this very case.

Debtor is also reliably informed that a large block of T o Hundred and Ten Thousand Dollars, face value, of these bo.. is are held by the American National Bank and were taken over from the Fourth & First National Bank, of Nashville, under some plan of consolidation of the two banks, and that nothing like the full face value of the bonds was paid therefor, or

credits taken therefor; and, debtor is informed probably not to exceed thirty cents on the dollar of the face value of the bonds.

The debtor is further informed that all of the other outstanding bonds were bought at much less than face value, or only held as collateral to secure indebtedness, and that some of them have changed hands since the debtor was known to be insolvent, and since the Receivership case was filed in this cause.

Respectfully submitted,

TENNESSEE PUBLISHING CO.
By E. W. CARMACK, President.

RESPONSE OF O. H. INGRAM AND J. C. BRADFORD TO PROPOSED PLAN OF REORGANIZATION FILED OCTOBER 16, 1935

(Filed October 25, 1935)

Come O. H. Ingram and J. C. Bradford, and respectfully state to the Court as follows:

Respondents, O. H. Ingram and J. C. Bradford, have heretofore appeared in this cause and shown that they are the lawful owners and holders of $60,000.00 of principal amount of 6½% fifteen year debenture bonds, dated November 1, 1928, issued by Debtor, Tennessee Publishing Company, and numbered 566 to 625 inclusive; that said bonds have attached to them unpaid the semi-annual interest coupons maturing on May 1, 1933, and subsequent to that date; and that said bonds are a part of a series of bonds issued by Debtor as of November 1, 1928, and secured by a trust indenture of the same date recorded in Book 708, Page 69, in the Register's office for Davidson County, Tennessee.

Respondents acquired said bonds prior to the enactment of Section 77B of the Bankruptcy Act.

Respondent O. H. Ingram heretofore, to-wit, on or about the ..... day of April, 1934, filed his petition and claim in the equity receivership proceeding entitled C. O. Carpenter, Receiver, etc., vs. Tennessee Publishing Company, No. 546 in

Response Of O. H. Ingram And J. C. Bradford To Proposed Plan Of Reorganization

Equity, pending in this court, and in said petition alleged and showed that said bonds were in default as to payment of interest and otherwise, and that defendant Tennessee Publishing Company was insolvent, and prayed for a judgment and for a sale of the assets of said Tennessee Publishing Company, and the application of the proceeds to the satisfaction of his claim and judgment pro rata with other bondholders. Subsequently, to-wit, on or about the ..... day of May, 1934, respondents O. H. Ingram and J. C. Bradford filed their petition in said cause showing that said respondent J. C. Bradford had acquired a participation or interest in said bonds, and prayed that they jointly have the relief prayed in the petition previously filed by respondent O. H. Ingram.

Respondents now show that approximately eighteen months have elapsed since the filing of the petition and claim upon said bonds in said equity receivership proceeding whereing a sale of the properties was prayed, and that they have continuously since that time desired and sought a sale as they were entitled to under the provisions of said bonds and the trust indenture securing them.

Respondents state that the proposed plan of reorganization filed in this cause on October 16, 1935, seeks to take away and destroy their right to a sale of the properties of Debtor, and to permit Debtor to retaining said properties, notwithstanding its long continued defaults under said trust indenture.

Respondents do not consent to such plan, and will not consent to any plan whereby they are denied the right to a sale which they have been seeking for so long a time, and to which they were entitled under the express provisions of said trust indenture. And they aver that the adoption of such a plan would deprive them of valuable property rights contrary to the provisions of the Fifth Amendment to the Constitution of the United States.

Wherefore respondents pray that said plan of reorganization be declared ineffective, null, void and of no effect, and that the petition and all amendments thereto of Debtor in this cause, and all proceedings based or sought to be based thereon, be dismissed by the court.

PITTS, McCONNICO, HATCHER & WALLER,
Attorneys for respondents O. H. Ingram and J. C. Bradford.

STATE OF TENNESSEE
COUNTY OF DAVIDSON

J. C. Bradford, one of the respondents, makes oath and says

that he has read the foregoing Response and that the statements contained therein are true to the best of his knowledge, information and belief.

J. C. BRADFORD.

Sworn to and subscribed before me this 24th day of October, 1935.

RUTH EDWARDS,

(SEAL) Notary Public.

ANSWER OF RECEIVERS OF MINNESOTA & ONTARIO PAPER CO.

(Filed October 25, 1935)

R. H. M.Robinson and C. T. Jaffray, Receivers of the Minnesota & Ontario Paper Company, a corporation under laws of Maine, with its principal office in Minneapolis, Minnesota, acting as such Receivers under decree of the District Court of the United States, for the District of Minnesota, Fourth Division, now come, and on behalf of the said Minnesota & Ontario Paper Company, submit this their answer to the plan of reorganization filed herein on October 23rd, 1935, and respectfully show to the Court:

1. That Minnesota & Ontario Paper Company has an unsecured claim, which has been allowed by the Special Master against the Tennessee Publishing Company, in the sum of $121,494.00.

2. That they are unwilling to consent to or participate in the above mentioned plan of reorganization of Tennessee Publishing Company, submitted to the Court on October 23rd, being of opinion that the same is not practicable; that those offering the plan are not in position to raise the amount of money requisite for a new plant and sufficient working capital; and that the plan of reorganization offered is legally unsound.

3. That they believe that the receivership should be ended, and the property, which is subject to sale, should now be sold under the orders of the Court.

TRABUE, HUME & ARMISTEAD,
MALONE & WADE,
Attorneys for Receivers.

OFFER OF PAUL M. DAVIS, OF NASHVILLE, TENNESSEE, TO PURCHASE THE ASSETS OF TENNESSEE PUBLISHING COMPANY

Comes Paul M. Davis, of Nashville, Tennessee, leave of court being first had and obtained, and offers to purchase all of the assets of the defendant in this cause, Tennessee Publishing Company, now held by Lit J. Pardue, Receiver, for the consideration and upon the terms and conditions hereinafter set out.

The said Paul M. Davis offers to pay the sum of $400,000.00 for all of the assets of Tennessee Publishing Company included in and covered by the deed of trust from Tennessee Publishing Company to Liberty Central Trust Company and E. J. Miller, of St. Louis, Missouri, as Trustees, made the 1st day of November, 1928, to secure $750,000.00 in principal amount of 6½% Fifteen Year Debenture Bonds dated November 1, 1928, as registered in the Register's Office of Davidson County, Tennessee, and as reported by Byrd Douglas, Esquire, Standing Master, in his report heretofore filed in this cause on March 20, 1935, said offer being made subject to the confirmation of said report with respect to the lien of said deed of trust and the properties and assets covered thereby.

Said properties and assets for which said offer is made are those specifically described on pages 80 to 84, inclusive, of the foregoing report of the Standing Master and comprise generally all the mechanical and other equipment of the Tennessee Publishing Company now being used by Lit J. Pardue, Receiver, and also all other machinery, equipment, office, furniture, typewriters, automobiles, trucks, mailing machines, files, records, books, library, morgue, rights, franchises, easements, good will, subscriptions and subscription lists, contracts for advertising, press franchises, including all the right, title and interest of the Tennessee Publishing Company in and to the membership in the Associated Press for use in the publication of the Tennessean Papers and all other press memberships to which the said Tennessee Publishing Company is entitled, excluding only those properties and assets known and described as material, supplies and merchandise which are the subject of sale or are consumable in the usual course of business and not legally subject to mortgage, cash, claims, book accounts, and bills and notes receivable.

Said offer is made expressly subject to all of the terms, conditions and provisions contained in the above mentioned deed of trust from Tennessee Publishing Company to Liberty Central Trust Company and E. J. Miller, as Trustees (now St. Louis Union Trust Company and E. J. Miller, Trustees), with respect to the sale of such properties, including the provisions

in Article Sixth thereof with respect to settlement and payment of the properties purchased under foreclosure sale and the right to make settlement by applying towards the payment of the purchase price and to be credited therewith any outstanding bonds and maturing and unpaid interest coupons to the amounts to which such bonds and interest coupons would be entitled upon a distribution among the holders of the bonds of the net proceeds of such sales after making the proper deductions for the costs and expenses of the sale.

For the remaining assets excluded from the foregoing offer, being those properties and assets known and described as materials, supplies and merchandise which are the subject of sale or are consumable in the usual course of business and not legally subject to mortgage, cash, claims, book accounts, and bills and notes receivable, including also any and all machinery and equipment purchased during the receivership and now being used by the Receiver and not included under the lien of the above mentioned deed of trust, the said Paul M. Davis offers the sum of $40,000.00.

The sale of all of the foregoing assets shall be free and clear of all liens and encumbrances and of all claims against any indebtedness of the Receiver, possession to be given upon the date of confirmation but settlement between the Receiver and the purchaser to be made as of October 7, 1935, with proper adjustments for operations subsequent to said date. If ordered by the court, the purchaser will assume any part or all of the designated indebtedness of the Receiver, taking proper credit therefor against the cash purchase price above set out.

In the event the court shall order all of the properties and assets of Tennessee Publishing Company sold in this cause under the terms and subject to the provisions of the aforementioned deed of trust, as hereinabove set out, such order to be entered herein within thirty days from the date of filing of this offer, the said Paul M. Davis agrees that the sums hereinabove offered for the purchase of the respective assets, subject to the conditions hereinabove stated, may be deemed and treated as an upset price at such sale and the said Paul M. Davis agrees to appear and bid said respective sums at any such sale so ordered by the court, and further agrees, upon the entry of any such order of sale, to forthwith deposit such sums in escrow or enter into a solvent bond or undertaking guaranteeing that he will appear and make such bid at said sale and pay the proposed purchase price for the respective properties unless a higher and better bid is offered and accepted by the court.

Respectfully submitted,

PAUL M. DAVIS.

INTERVENING PETITION, OBJECTIONS AND MOTION OF PAUL M. DAVIS, A LIEN CREDITOR

(Filed October 25, 1935)

Comes Paul M. Davis of Nashville, Tennessee, and leave of court being first had and obtained, intervenes in this cause, and respectfully shows to the court as follows:

I

Petitioner has recently acquired the Debtor's bonds, formerly held and owned by Canal Bank & Trust Company, in the principal sum of $250,000.00, being Bonds Nos. 1 to 250, inclusive, with interest coupons thereon at 6½% from November 1, 1932. At the time of the hearing before Byrd Douglas, Esquire, Standing Master in the cause of C. O. Carpenter, Receiver, against Tennessee Publishing Company, being the equity receivership cause in this court, said bonds were proven and filed by the said Canal Bank & Trust Company and were shown at that time to be pledged as security to a loan to said bank from the Reconstruction Finance Corporation, and were adjudged to be the lawful obligations of the Debtor in the amount aforesaid, and secured by the Indenture heretofore referred to and filed in this cause by American National Bank and other bond creditors. The total amount due on said bonds, including interest up to November 1, 1935, is $298,750.

II

Said indebtedness is secured by a lien on the Debtor's specific properties created and executed on November 1, 1928.

III

This bond creditor does hereby expressly decline to accept, approve or agree to any of the proposed plans of reorganization heretofore filed in this cause, including the proposed plan filed herein on October 23, 1935.

IV

This creditor does hereby object to the proposed plans upon each and every ground set out and contained in the objections of American National Bank of Nashville, also a bond creditor, in its various answers, amended and supplemental answers, motions and supplemental motions, and does hereby adopt all of such objections contained in the pleadings of the said American National Bank and insists upon the enforcement of all of his substantive rights in and to the specific properties covered by the Indenture, and avers all of said pro-

posed plans of reorganization seek to take from him, without his consent, all of said property rights as set out in detail in the pleadings of the said American National Bank, and this creditor relies upon his constitutional rights as guaranteed in the 5th Amendment to the Constitution of the United States, and avers that each and every one of said plans, if approved, will violate such rights.

V

Wherefore the said Paul M. Davis joins in the motion of the said American National Bank and other bondholders to dismiss the Debtor's petition, the same being futile and having no reasonable prospect for success, and not being filed in good faith.

BASS, BERRY & SIMS.
Attorneys.

STATE OF TENNESSEE
COUNTY OF DAVIDSON

Paul M. Davis makes oath that the matters and things stated in the foregoing pleading are true, and those stated on information and belief he verily believes to be true.

PAUL M. DAVIS.

Sworn to and subscribed before me this 24th day of October, 1935. MARY E. WOODALL,

(SEAL) Notary Public.

My Commission expires Jan. 3, 1938.

OBJECTIONS OF C. O. CARPENTER, RECEIVER OF HOLSTON-UNION NATIONAL BANK, TO PROPOSED PLAN OF REORGANIZATION FILED HEREIN ON OCTOBER 23, 1935

(Filed October 25, 1935)

Comes C. O. Carpenter, Receiver of Holston-Union National Bank, and declines to accept or approve the proposed plan

of reorganization filed by the Debtor on October 23, 1935, and declines to consent thereto upon the grounds and for the reasons set out in his former pleadings in this cause, which he re-affirms and, expressly reserving all of his rights under the former proceedings in this cause, and without waiving the same, respectfully shows to the Court as follows:

I

Said C. O. Carpenter, Receiver of Holston-Union National Bank, is both a lien creditor and an unsecured creditor of the Debtor, holding its bonds in the principal sum of $28,000.00, with accrued interest at 6½%, as provided on coupons, since November 1, 1932, secured by a specific lien upon the properties of the Debtor created by an indenture executed on November 1, 1928, the exact amount of all of such indebtedness, both secured and unsecured, being as set out by this creditor's former pleadings in this cause, to which reference is here made. This creditor declines to accept said plan of reorganization in its capacity both as lien creditor or bondholder and as an unsecured creditor.

II

As shown by former pleadings in this cause, this creditor instituted an equity receivership proceeding against the Debtor in this Court on March 3, 1933, since which time all of the properties of the Debtor have been in the possession and custody and under the operation of Lit J. Pardue, Receiver, in which equity receivership cause all of the various bondholders were made parties and their rights, interests, claims and liens duly and finally adjudicated and this creditor duly prayed and moved for a judicial sale of the properties covered by the indenture to secure the bonds for the purpose of satisfying the same, and each and every one of the proposed plans of reorganization filed in this cause, including the one filed on October 23, 1935, seek to deprive this creditor and the other lien creditors of their substantive rights in and to a public sale, the right to retain the lien until the debt is satisfied in full, the right to appear and bid at such public sale and if purchased by this creditor to turn in bonds in satisfaction of the bid to the extent that his bond creditor would be entitled to the proceeds in distribution, and pending such foreclosure and judicial public sale the right to have the properties held and operated by a receiver and the rents and profits, if any, applied to the satisfaction of this creditor's and other bondholders' claims, and other substantive rights in and to the specific properties in violation of the Fifth Amendment to

the Constitution of the United States, upon which this creditor expressly relies, and therefore all of such plans, having been disapproved by all of the bondholders and more than a majority of the unsecured creditors, are futile and the entire proceeding should be promptly dismissed by the Court as having no reasonable prospect of success.

III

The plan seeks to scale down and reduce the bondholders claims by forfeiting, cancelling, and setting aside the accrued interest on the bonds, amounting to $146,250.00 as of November 1, 1935, and to take away the rights and liens of the bondholders in the specific properties to secure the payment of past due interest, in violation of the Fifth Amendment to the Constitution of the United States.

IV

The plan seeks to force the bondholders to accept a cancellation of accrued interest, an extension of time for the payment of the bonds at a different and new rate of interest than as provided in the indenture and secured by the lien of the specific properties and is, in legal effect, a cancellation of the existing bonds and the issuance of new securities in lieu thereof, with different maturities and interest rates, which has been declined by the bondholders and which violates their vested rights protected by the Fifth Amendment to the Constitution of the United States, and which also violates the express terms of Section 77 of the Bankruptcy Act as amended.

V

The proposed plan violates the express provisions of Section 77B of the Bankruptcy Act as amended, in that it does not provide for a transfer or sale of the properties or retention thereof by the debtor subject to the existing interest, claims or liens of the bondholders, but seeks recovery or repossession of said properties subject only to a lien in favor of the bondholders after a forfeiture of their accrued interest and extension of the maturity of the bonds and an alteration of the interest rate, and other modifications not permitted under the Fifth Amendment to the Constitution of the United States or under the provisions of Section 77B of the Bankruptcy Act as amended, including an involuntary waiver of all requirements as to the sinking fund and other provisions contained in the indenture to protect the interest of bondhold-

ers, all of which are secured by a lien on the specific properties.

VI

The provisions of Section 77B of the Bankruptcy Act as amended with respect to the debtor's retention of its property subject to all existing interest, claims or liens of creditors is applicable only where the debtor at the time the plan is proposed is in the possession of its properties, where, in the present case, Debtor is not in the possession of its properties, the same having been in the possession of an equity receiver since March 3, 1935.

VII

It is further shown that several responsible bidders (who are not owners of any of the bonds), in addition to Paul M. Davis, are desirous of bidding on the property of the Debtor. They have indicated a willingness to bid more than the amount offered by said Davis. Respondent verily believes the bondholders will receive more through the medium of a judicial public sale than through the plan of reorganization as amended. This respondent is engaged in the liquidation of the assets of an insolvent national bank. Accordingly it is his duty to liquidate the bonds for cash and he asserts that a judicial public sale affords him an excellent opportunity to do so, and that this is a substantive right of which he and those whom he represents can not be deprived.

For the foregoing reasons and upon the objections herein set out and those set out in former pleadings, all of which are relied on, this creditor again moves the Court to forthdismiss the Debtor's petition in order that the properties may be sold at judicial public sale without further expense or delay.

C. O. CARPENTER, Receiver of Holston-Union National Bank.

By FOWLER & FOWLER,
Solicitors.

OBJECTIONS OF AMERICAN NATIONAL BANK OF NASHVILLE, A LIEN CREDITOR, TO PROPOSED PLAN OF REORGANIZATION FILED HEREIN ON OCTOBER 23, 1935, AND MOTION TO DISMISS DEBTOR'S PETITION

(Filed October 25, 1935)

Comes American National Bank of Nashville, a lien creditor, and, expressly reserving all of its rights under the former proceedings in this cause, declines to accept or approve any of the various plans of reorganization proposed by the Debtor, including the plan filed in this cause on October 23, 1935, upon the grounds and for the reasons heretofore set out in this creditor's answer, amended and supplemental answer, and its motion and supplemental motion to dismiss the Debtor's petition in response to the order to show cause made by the Court at the time the petition was originally filed, and respectfully shows to the Court as follows:

I

This creditor reaffirms and adopts each and all of the allegations and reservation of rights contained and set out in its former pleadings in this cause.

II

This Court has heretofore rendered a final decision and signed and lodged a final decree with the Clerk specifically dismissing the cause as futile because of the established inability of the Debtor to procure the necessary consent of the majority of the affected creditors of each class, and because the various proposed plans of reorganization sought to deny the bondholders' substantive rights in the specific property covered by the lien to secure the bonds without their consent, and the plan now proposed since the signing of said decree is likewise subject to the same objections in that no bond creditor has approved the plan and more than two-thirds in amount of said bondholders have, by pleadings in this cause, expressly declined to accept or approve the plan.

III

This creditor is the lawful owner and holder in due course of Debtor's bonds in the principal sum of $210,000.00, with interest coupons at 6½% which are past due from November 1, 1932, the amount of said bonded indebtedness held by this creditor as of November 1, 1935, being $250,950.00, which indebtedness is secured by a lien on the Debtor's specific prop-

erties, created and executed on November 1, 1928, and said proposed plan of reorganization can not be approved or confirmed by the Court in the absence of express acceptance and approval by more than two-thirds in amount of the holders of said bonds because to do so would deprive this creditor and other bondholders of its vested substantive rights in the specific properties under said indenture and under the laws of the State of Tennessee, as set out specifically in this creditor's amended and supplemental answers and amended and supplemental motion heretofore filed in this cause.

IV

The proposed plan of reorganization can not be approved or confirmed because more than fifty percent of the unsecured creditors have, by pleadings in this cause, expressly declined to accept or approve the plan.

V

The plan seeks to scale down and reduce the bondholders' claims by forfeiting, cancelling, and setting aside the accrued interest on the bonds, amounting to $146,250.00 as of November 1, 1935, and to take away the rights and liens of the bondholders in the specific properties to secure the payment of past due interest, in violation of the Fifth Amendment to the Constitution of the United States.

VI

The plan seeks to force the bondholders to accept a cancellation of accrued interest, an extension of time for the payment of the bonds at a different and new rate of interest than as provided in the indenture and secured by the lien of the specific properties and is, in legal effect, a cancellation of the existing bonds and the issuance of new securities in lieu thereof, with different maturities and interest rates, which has been declined by the bondholders and which violates their vested rights protected by the Fifth Amendment to the Constitution of the United States, and which also violates the express terms of Section 77 of the Bankruptcy Act as amended.

VII

The proposed plan violates the express provisions of Section 77B of the Bankruptcy Act as amended, in that it does not provide for a transfer or sale of the properties or retention thereof by the Debtor subject to the existing interest,

claims or liens of the bondholders, but seeks recovery or repossession of said properties subject only to a lien in favor of the bondholders after a forfeiture of their accrued interest and extension of the maturity of the bonds and an alteration of the interest rate, and other modifications not permitted under the Fifth Amendment to the Constitution of the United States or under the provisions of Section 77B of the Bankruptcy Act as amended, including an involuntary waiver of all requirements as to the sinking fund and other provisions contained in the indenture to protect the interest of bondholders, all of which are secured by a lien on the specific properties.

VIII

The provisions of Section 77B of the Bankruptcy Act as amended with respect to the debtor's retention of its property subject to all existing interest, claims or liens of creditors is applicable only where the debtor at the time the plan is proposed is in the possession of its properties, whereas, in the present case, Debtor is not in the possession of its properties, the same having been in the possession of an equity receiver since March 3, 1933.

Wherefore this creditor here and now again moves the Court to dismiss said petition, the same being futile and having no reasonable prospect for success and not being filed in good faith.

AMERICAN NATIONAL BANK OF NASHVILLE.
By BASS, BERRY & SIMS,
Attorneys.

STATE OF TENNESSEE
COUNTY OF DAVIDSON

Paul M. Davis makes oath that he is President of American National Bank of Nashville; that he is familiar with the matters and things stated in the foregoing pleading, and that the statements made therein are true and those made on information and belief he verily believes to be true.

PAUL M. DAVIS.

Sworn to and subscribed before me, this 24th day of October, 1935.

(SEAL)

MARY E. WOODALL,
Notary Public.

FILATION ORDER OF AMENDMENT TO RE-ORGANIZATION PLAN OF OCT. 23

The Debtor asked leave of the Court on the 25th day of October, 1935, to file an Amendment to the Plan of Reorganization filed on October 23, 1935.

The Court granted the motion and ordered the amendment filed as of that date.

This order is made by the Court on November 15, 1935 and ordered entered as of October 25, 1935.

GORE, Judge.

AMENDMENT TO PLAN OF RE-ORGANIZATION FILED OCTOBER 23, 1935

(Filed October 25, 1935)

Comes the debtor, the Tennessee Publishing Company, a corporation, and moves the Court that it be allowed to amend its plan of re-organization, filed herein on October 23rd, 1935, by adding at the end of paragraph VI therein, the following:

"That, at the time the original bill was filed in this Court, on the ..... day of March, 1933, by C. O. Carpenter, Receiver vs. Tennessee Publishing Co., that there was no interest, or any other amount for any other reason, due or unpaid on the alleged outstanding bond issue, and that all of the interest, up to that time, had been paid, and nothing was due thereon.

That said alleged bonds were in no way in default at that time.

That the original bill filed therein was not predicated upon any allegations that there was any default whatever on any of the bonds; but, the bill was based entirely upon other matters, and the Receiver was appointed by the Court, therein, upon other allegations contained in the bill, and with no reference whatever to any default on the bonds, or the interest thereon.

That the reports of the receiver, appointed by the Court, in the Receivership case, and as thoroughly confirmed by the

report of the American Appraisal Co., which company was designated by the Court as the Appraiser to value the property of debtor.

That the Receiver had an abundance of funds, in his hands, during the operation of the Receivership, to have paid all of the accrued interest on said bonds, if any was due, but he has not used the money that way; but, on the other hand, has used it for other purposes, as shown in his reports.

In fact, it is disclosed that he has spent some Forty-five Thousand Dollars of the receipts of the operation of debtor's business in extending the circulation, establishing and building up extravagant agencies in different towns, and establishing motor deliveries, the result of which has been probably to increase the circulation, but not to add materially to the value of debtor's properties, as the exorbitant cost of the same has not reflected favorably in the returns therefrom; it not materially adding to the revenue derived from the advertising in the papers.

In addition to the above expenditures, the Receiver has added very materially to the cost of operation of the business, and as debtor is informed, and believes, has unnecessarily increased the salary expenses alone approximately Ninety Thousand Dollars per year. This is clearly shown and demonstrated in the report of the Appraiser filed herein.

Again, the Receiver has paid out of the receipts of debtor's business a large sum of money, as shown by his reports and the report of the Appraiser, fully Sixty Thousand Dollars, on an unsecured claim of a creditor, whose debt was in existence and due from the debtor, if due at all, prior to the appointment of the receiver in the Receivership case. This money debtor believes to have been paid illegally and unlawfully, and that it would have gone a long ways towards preventing any default on any of said alleged bonds. This money was paid to certain ones of the bondholders herein, but not on their bonds, but on this old pre-existing debt, which stood in the same class as all other unsecured creditors.

In this connection, debtor also deems it its duty to remind the Court that one of the Attorneys of the Receiver, and who, as debtor understands, advised the Receiver to pay this money out on this old claim, as above set out, was during all of that time the Attorney for the American National Bank, which held a large block of these alleged bonds, and who has taken the lead, representing certain bondholders in the present case, at each and every hearing before this Court, and who has op-

posed each and every type of re-organization offered by the debtor. This same Attorney now represents also, in addition to the American National Bank, Mr. Paul M. Davis, who claims to be the holder, recently acquired, of Two Hundred and Fifty Thousand Dollars, face value, of said bonds.

Debtor feels it is its duty to, frankly, bring these matters to the Court's attention, at this time; although the same has been mentioned in Court, orally, numbers of times in the hearings in this cause, they have not been set out in writing and filed as a part of the record in the case, which is now sought to be done.

TENNESSEE PUBLISHING COMPANY.
By E. W. CARMACK,
President.

MEMORANDUM OF ORAL OPINION DELIVERED OCTOBER 15, 1935

(Filed October 23, 1935)

Upon the filing of the petition by the debtor corporation to reorganize under Section 77-B, an order was entered approving it as properly filed, and that it was filed in good faith. However, the right was reserved to any person in interest to object to it upon any legal grounds, and parties in interest were directed to show cause why it was not filed in good faith

Motions to dismiss the petition were seasonably filed by some of the bondholders. Later, the debtor filed a motion to dismiss the motion to dismiss filed by the bondholders.

There have been a number of hearings on this phase of the case, and at one time debtor offered to file a petition asking Court to take steps to ascertain the actual value of the bonds held by the bondholders.

Permission to file such petition was made at Cookeville, and the Court declined to permit it to be filed at that time, announcing that it would not be filed until an appraisal of the

property had been made and report was made. Appraisers were appointed and the report was made. Thereupon, the debtor seasonably filed another petition, asking, among other things, that the Court judicially determine the value of the securities held by the bondholders.

The question now comes on to be heard upon the motion of the bondholders to dismiss the initial petition; the motion is upon the grounds that the petition is not filed in good faith, and that debtor has not, and cannot, secure consent of the statutory amount of the creditors affected by the plan, and therefore, it would be futile and of no benefit to anyone to proceed further with the case.

It is averred in the motion that upon information and belief no one of the persons interested in the proposed plan of reorganization had any interest in the Tennessee Publishing Company either as stockholder, officer, employee, director, or otherwise, prior to the day before the filing of the petition; that on or about June fifth, 1935, the day before the time fixed by the Court to act upon the motion for an order of sale in the equity receivership case of C. O. Carpenter vs. Tennessee Publishing Company, pending in this Court, Mr. Edward W. Carmack and his associates acquired the entire common stock of the Tennessee Publishing Company, and that they knew at the time that the stock was worthless, for which they paid no consideration other than the purported cancellation of a small note signed by the former owner of the common stock and his son, both of whom, it is averred, were insolvent, and that the note was barred by the statute of limitations. It is then averred:

> "The whole purpose of the transaction being to engage in a highly speculative venture, the plan being to harass the bondholders and other creditors whose claims have been allowed in the receivership cause by dilatory tactics, and that such parties do not come within the intent and meaning of section 77-B of the Bankruptcy Act, and have no standing whatever in this Court as proper parties for the reorganization of the corporation and are not acting in good faith."

Referring to the plan proposed by the debtor, it is stated in the motion to dismiss:

> "The proposed plans of reorganization submitted by the petitioner debtor are wholly impracticable, have not the slightest chance of being successful, and further pro-

ceedings in this cause will be absolutely futile. As will be seen from the plans of reorganization, the petitioning debtor has no real estate, and assets consist largely of machinery, equipment, circulation, good will and accounts receivable, which are said by the petitioning debtor to be worth approximately $300,000.00 against a bond indebtedness exceeding $900,000.00 and an unsecured indebtedness exceeding $300,000.00."

It is averred further that there is no possibility or probability of the plan being adopted by the Court, because it is said that not a single creditor, secured or unsecured has approved or censented to the proposed plan of reorganization, and on the other hand, the bondholders holding $548,000.00 in principal amount of bonds out of a total issue of $750,000.00, have appeared in open Court and expressly and emphatically disapproved of said plan, and declined to agree thereto, and unsecured creditors holding more than fifty per cent of the unsecured debts have likewise appeared in open Court and expressly disapproved of the plan, and refused and declined to agree thereto.

It is averred that under no circumstances will the necessary consent of creditors, as required by the provisions of Section 77-B of the Bankruptcy Act, be obtained so as to permit the approval by the Court of the proposed plan of reorganization.

It is then averred that if the plans of reorganization are to be construed as proposing that the Court order an appraisal of the assets of the debtor which are subject to the lien of the trust deed to secure the bondholders, with a view of tendering cash or securities in the principal sum of approximately three hundred thousand dollars in settlement and satisfaction of the lien of said bondholders, and for the purpose of freeing the respective properties from said lien, it is averred that such proposal has been unanimously rejected by holders of all of said bonds who have in open Court and by pleadings in this cause, refused and declined to agree thereto:

That the bonds were issued by the debtor on November 1, 1928, secured by a deed of trust executed on the same day, which is duly registered in the Register's office of Davidson County, Tennessee, as required by law, and that prior to the passage of the Amendment to the Bankruptcy Act, known as 77-B, the holders of said bonds had acquired a fixed interest and property rights under the provisions and conditions of said indenture against the property and assets of the Tennessee Publishing Company; that under the laws of Tennessee, prior to the passage of the amendment by Congress, and

at the present time, the bondholders, as a matter of property, right, are entitled to have the properties and assets foreclosed and sold at public auction, either through proceedings in equity in any Court of competent jurisdiction, or by advertisement and proceedings provided in said indenture; and that,

> "Therefore any appraisal and payment to the bondholders of any amount in cash less than the full amount required to pay and satisfy their total indebtedness, including interest, without their consent, or involuntary scaling down of their indebtedness to the alleged present value of the property, would be a violation of the Fifth Amendment to the Constitution of the United States, and would constitute the taking of this creditor's property without due process of law, and if so construed said amendment to the Bankruptcy Act, known as Section 77B is wholly inoperative, unconstitutional and void."

And the creditors then claim protection of the provisions of the Fifth Amendment to the Constitution, and specifically rely upon the protection afforded by it.

The motion to dismiss alleges that at the time of the passage by Congress of the Amendment to the Bankruptcy Act, Section 77B, the bondholders had acquired substantive rights in the specific property covered by the indenture. It is then averred that a bona fide offer by Mr. Paul M. Davis, of four hundred thousand dollars has been made, for the mortgaged property; and that, therefore, the present value of the interests of the bondholders is in excess of three hundred thousand dollars, and is four hundred thousand dollars.

Having determined that the petition was filed in the manner prescribed by the Statute, it first becomes necessary to pass upon the question of whether or not the petition was filed in good faith.

Upon that question I find as a fact that it was filed in good faith. The petition was not filed by Mr. Carmack and his associates, but it was filed by the debtor corporation, and under the Amendment, Section 77B, the debtor is authorized to file such a voluntary petition. It is true that Mr. Carmack acquired all the common stock of the corporation, the day before the petition was filed, but the pleadings show, (and it is admitted that they may be taken as evidence on this hearing) that Mr. Carmack and his mother had been interested as preferred stockholders in the Tennessean Corporation for many years. Mr. Carmack is a newspaper man by profession, he is editor of, and manages, a daily newspaper at Murfreesboro, Tennessee. The petition states that for years he has endea-

vored to become connected with the Tennessean, and that for many months prior to the time he acquired the common stock from the former owner, he had been negotiating for it, and was trying to acquire it; that he had devoted much time and expense in interesting capital with a view of filing the petition and reorganizing the corporation; it states that he succeeded in acquiring the common stock on June 5th, 1935, that at a meeting of the stockholders on that date, new directors were elected and that they in turn elected officers of the corporation, and he was elected president; it is stated that a resolution duly and properly adopted, directed him to file the petition under 77B.

All informed persons know that the political history of Tennessee, for more than twenty-five years was made in and around this newspaper; and that the father of the present president of the corporation was a very prominent instrumentality in formulating the policies of the State, which, since the establishment of this paper, have found expression in legislative enactment, that the laws which he and the paper advocated still remain on the statute books of the State.

It is shown by the appraisal that the debtor's assets are capable of being developed into a very valuable property; that there are great possibilities for the paper, if properly managed, and that it is a good financial investment.

Aside from that the connection of Mr. Carmack's family with the Tennessean, and the establishment of the paper would naturally cause him, from sentimental reasons, to aspire to connection with it, and to become its editor.

There is no proof in the record, and there is no allegation in any of the pleadings as I remember, to the effect that Mr. Carmack is to become financially interested in the paper, other than his ownership of a small amount of the preferred stock, and the common stock.

As stated, I can readily see from sentimental as well as from financial reasons, that Mr. Carmack would like to become connected with the paper.

I see nothing in the record which would indicate that his purchase of the stock was solely for speculative purposes, or was to hinder and delay or embarrass the bondholders in the equity proceedings.

Upon the other hand I know, and I find as a fact, that the attorneys for the debtor have been quite diligent and persistent in asking the Court to expedite the matter, and bring the issues to a termination in some way. I find nothing in the

record which indicates that their purpose was to delay the determination of the equity case.

Another evidence of good faith is the plan proposed. I do not intend now to say, or to intimate, that in the event I should overrule the motion to dismiss the petition, (in fact, that question will be dealt with later) that the plan proposed will be approved by the Court; in fact, the first plan was filed on July 13, 1935; subsequently the alternative plan was filed on August 31, 1935, and on today, an amendment to the plan has been offered, and filed, and just how many more amendments will be made, or offered, just what plan, if any will be adopted, yet remains to be seen; but I do say that there is nothing in the plans which would suggest that the application is not in good faith.

So, I find as a fact that the application is not only not in bad faith, but it is in good faith.

It is said in the motion to dismiss that the plan is not capable of execution, and that the proponents of the plan are unable to perform the covenants and agreements set out therein. As to that I do not know, I do know that they say they have capital behind them; that they can make good every proposal offered in the plans, and that they have sufficient financial backing. In the second plan it is proposed to give security that they will comply with its provisions, if accepted. They also propose, if the lien holders are unwilling to accept new security, for their debts, they will pay in cash, the value of the property covered by the mortgage, the value to be judicially determined by the Court. I have no reason to doubt that they can do just what they say they can do. Of course, if they should fail to do so, it would result that the plan would fail, and another plan would be offered, or else the estate would be liquidated in another way. I certainly would not be justified at this time, in finding that they are not financially able to carry out the proposals of the plans.

There are some features of the plans which commend themselves to me. It is conceded that the value of the property is nothing like sufficient to equal the amount of the face value of the mortgage lien; i. e., it is conceded that if the property is disposed of in any way, at public sale or otherwise, its fair cash value will not equal the face value of the bonds outstanding against it. If that be true, of course there is nothing left for the unsecured creditors and the stockholders—preferred or common. It is shown by the report of the Standing Master in the equity case, that the unsecured debts in round numbers, amount to three hundred thousand dollars. It is averred in the pleadings and in the motion to dismiss,

that in addition to this three hundred thousand dollars, the mortgaged property will lack several hundred thousand dollars of paying the claims of the bondholders, and therefore the deficit thus arising will cause them to become common creditors for the difference, which will amount to several hundred thousand dollars; but, notwithstanding that, the plan offers to the unsecured creditors a hundred thousand dollars of five per cent interest non-accumulating preferred stock.

For some reason, (unknown to the Court) a great majority of the unsecured creditors are unwilling to accept that stock. Out of say three hundred thousand dollars of unsecured creditors as reported by the Standing Master, only about eleven thousand dollars come into Court and agree to accept the proposition. It is hard to understand why that is so, it looks to me that if I were an unsecured creditor, I would choose preferred stock in any amount in a new corporation, to nothing. It savors of a collusion which doesn't look good. Just why an unsecured creditor would rather have nothing, than to have preferred stock in a new corporation is hard to understand.

I refer to these things to emphasize the fact that the petition, in my judgment, is filed in good faith.

CONCLUSIONS OF LAW

The question, therefore, to be determined, is, does this plan, if approved, deprive the lienholders of a substantive property right? Sub-section (e) of Section 77B, so far as is pertinent, reads as follows:

> "A plan of reorganization shall not be confirmed until it has been accepted in writing, whether before or after the filing of the petition or answer under this section, and such acceptance shall have been filed in the proceeding by or on behalf of creditors holding two-thirds in amount of the claims of each class whose claims have been allowed, and would be affected by the plan and by or on behalf of stockholders of the debtor holding a majority of the stock of each class; provided, however, that such acceptance shall not be requisite to the confirmation of the plan by any creditor or class of creditors (a) whose claims are not affected by the plan."
>
> "Or, (b) if the plan makes provision for the payment of their claims in cash in full,"
>
> "Or, (c) if provision is made in the plan for the protection of the interests, claims, or liens, of such creditors

or class of creditors in the manner provided in sub-division b, clause 5, of this section."

Sub-division (b) clause (5) reads, so far as is pertinent, as follows:

"A plan of reorganization within the meaning of this section (1) shall include provisions modifying or altering the rights of creditors generally, or of any class of them, secured or unsecured, either through the issuance of new securities of any character or otherwise."

Clause 2 applies to the rights of stockholders.

Clause 3 provides for the payment in cash of all costs of the administration and other allowances made by the Court, with certain exceptions, the plan takes care of that.

Clause 4 pertains to stockholders; that is, therefore, not pertinent here.

Clause 5 reads:

"Shall provide in respect of each class of creditors of which less than two-thirds in amount shall accept such plan (unless the claims of such class of creditors will not be affected by the plan) or the plan makes provision for the payment of their claims in cash in full; provide adequate protection for the realization by them of the value of their interests, claims or liens is dealt with by the plan, either as provided in the plan (a) by the transfer or sale of such property subject to such interests, claims or liens, or by the retention of such property by the debtor, subject to such interests, claims, or liens, or (b) by a sale free of such interests, claims or liens, at not less than a fair upset price and the transfer of such interests, claims or liens to the proceeds of such sale; or (c) by appraisal and payment either in cash of the value either of such interests, claims or liens, or at the objecting creditor's election, of the securities allotted to such interests, claims or liens, under the plan, if any shall be so allotted, or (d) * * * *"

It is under clause (c) above, that the debtor asks his plan be approved.

The first method stated is (a) (5) sub-division "b", by the transfer or sale of such property subject to such interests, claims or liens. To transfer or sell the mortgaged property would defeat the purpose of the petition to reorganize, so same is not applicable here.

The second method: "Or by the retention of such property by the debtor subject to such interests, claims or liens." The

debtor cannot do that, because none of the bondholders are willing for the debtor to retain the mortgaged property, and debtor does not offer to pay cash for the face value of the bonds. Or, (b) "By a sale free of such interests, claims, or liens, at not less than a fair upset price, and the transfer of such interests, claims, or liens to the proceeds of such sale." That cannot be done, because if the property is sold, there is nothing to reorganize, and would likewise defeat the purpose of the petition.

Or (c) "By appraisal and payment either in cash of the value either of such interests, claims, or liens, or, at the objecting creditors election of the securities, allotted to such interests, claims of liens under the plan, if any shall be so allotted." A sale of the property as just stated would render impossible a reorganization, and to arrive at the value of creditors "interests, claims or liens" by appraisal would be violation of their Constitutional rights. How, then, are we to ascertain the value of their securities? The face value of their securities being more than the value of the property pledged to secure them, plus any amount they might receive from a sale of the assets of the bankrupt not covered by the mortgage, as unsecured claims.

Under the trust deed, which was executed in 1928, the bondholders are given certain specific rights; they are entitled to have the gross amount of the mortgaged property applied toward the satisfaction of their debt.

Section 77B has been before the Courts a few times, and on all occasions has been held to be constitutional, but the direct question of whether or not the Court can judicially determine, without the consent of at least two-thirds of the number and amount of the claims affected, the value of securities, and also the value of property pledged to secure same, by appraisal or by any method except that specifically provided for in the indenture, or by judicial sale, has not been passed upon.

It is conceded that the mortgaged property is worth less than the amount of the indebtedness which it secures; and practically all of both the secured and unsecured creditors oppose the plan, and a large majority of them are affirmatively asking that the plan be not approved, and they also ask that the property be sold either, under the trust deed, or by judicial sale in the equity case. If the requisite number of creditors affected by the plan should ask the Court to adopt it, then it would be done without hesitation; but, can the Court judicially determine without a public sale, that the value of the securities is the value of the property as fixed

by the appraisal, in the face of the recitations in the trust deed that the property should be sold in a different way? I think not.

I shall read at length, at the risk of being tedious, from the case of Louisville Joint Stock Land Bank vs. Radford, 295 U. S. 555. This is the last pronouncement of the Supreme Court of the United States upon kindred legislation, and is therefore controlling in this case. There the Court was dealing with Section 75 of the Bankruptcy Act; the farmer had executed a mortgage on a tract of land prior to the enactment of Sub-Section "S" to Section 75, and he sought the relief attempted to be given him by that sub-section. The land was situated in the State of Kentucky, and under the laws of that State, mortgages and not trust deeds, are the form of security. The only method of foreclosing a mortgage is by judicial sale. In Tennessee we have both trust deeds and mortgages; and we may foreclose either by judicial sale, or the trust deed may provide a means of foreclosure.

(The Court thereupon read at length from the opinion in the Radford case, supra.)

Under the authority of this case, it is plain that if the property here involved is sold in any way which is not provided for by the trust deed or at a judicial sale, or if the value of the property, or the value of the securities should be determined by appraisal, or in any way not agreeable to two-thirds or more of the bondholders, and contrary to the way provided for in the trust deed, it would take away from them, (the bondholders) substantive rights in the property. I can understand why (sub-section (c) clause (5) is included in the Act, because by it, it is possible fo the debtor and two-thirds or more of its creditors to adopt a method of arriving at the value of the securities held by them, over the objections of a minority, and thereby obviate the expense and delay of a public sale. But to adopt that method over the protest of practically all, and without the approval or sanction of any of the class of creditors affected, and over the protest of practically all the unsecured creditors, would deprive them of their property without due process of law, in violation of the Fifth Amendment to the Federal Constitution.

I think the debtor is not entitled to ascertain the value of the securities by appraisal, take the property under the plan proposed, therefore I must sustain the motion to dismiss on that ground. It would be useless and expensive to go further with the proceedings, as I see it.

MEMORANDUM OF ORAL OPINION DELIVERED October 23, 1935

(Filed October 23, 1935)

In view of the financial condition of the Debtor's estate, and in the interest of all concerned, I must dispose of this case in order that it may be appealed, that the questions involved may be determined by a higher Court without delay.

It is shown that debtor's newspapers are losing money, so it would be unjust and inexcusable for me to further delay making a final disposition of the case.

I thought I had done this a few days ago, but I permitted counsel to file another plan, if they could, that would comply with the opinion of the Court announced at that time.

Before disposition of the case, I desire to refer briefly to some matters contained in the amended plan which I think should be corrected.

I do not think the conclusions reached by the draftsman of the amended plan, filed October 23, 1935, are in all respects supported by the oral opinion delivered from the bench on October 15th. In the preliminary statement to the present amended plan, it is stated that the Court held that the plans that had, at that time been filed, appealed to the Court as feasible and workable, and that he would have been pleased to approve the plan, except, that same was not approved by two-thirds of the bondholders, and therefore, was violative of the Fifth Amendment to the Constitution of the United States; and that the Court stated that if the plan provided for the retention by the debtor of its property, subject to the claims and interest of the secured creditors, in the Court's opinion, would have been constitutional, and violate no rights of the secured creditors.

What the Court said upon that question was, that the plan was proposed in good faith, and as an evidence of good faith, it contained certain provisions relative to unsecured creditors, stockholders, etc., which appealed to him, but I did not say that the plan was feasible and workable, and that, but for the lack of approval by two-thirds of the bondholders, I would be glad to approve it. On the contrary, it was stated. "I do not intend now to say, or to intimate, that in the event I should overrule the motion to dismiss the petition, that the plan proposed will be approved by the Court." It was further stated, in reference to the proponents' ability to carry out the provisions of the plan, that the Court "had no reason

to doubt that they can do just what they say they can do" in this regard.

I think the draftsman of the amended plan misconstrued the language of the Court. I admit the conclusions of the Court were poorly stated, but I do not think what was said would justify the conclusion that the plan appeared to the Court to be workable and feasible, and that, but for the Constitutional questions, I would approve it. I could not properly have said that because at that time, the case was not in such condition as to justify an expression of opinion as to whether the plan would be approved or not.

The case now comes upon a new plan—filed on the 23rd of this month—subsequent to the oral opinion delivered on the 15th.

I believe it would manifestly be unjust to the bondholders to undo what has been done in the equity proceedings of the case of Carpenter, Receiver vs. Tennessee Publishing Company. In that case the validity and amount of the bonds outstanding was established. The debtor was a party to that suit; the question was submitted to the Standing Master, and he made his report covering that question. The report, I am informed, is unexcepted to. Hence it would result in a very great injustice to everyone to reconsider the validity and amount of the bonds, and undo what has been done in that case. These two cases have been going along together, and being tried and considered together, in all the hearings that have been before the Court.

It is admitted, and in fact, is abundantly shown by the report of the Standing Master in the equity case, that the debtor is notoriously insolvent.

Referring now to the present plan, filed October 23, 1935, the Court is asked to judicially determine the value of the securities. and upon that value, debtor proposes to issue new bonds, or to credit the present bonds with the value of its property, to be determined by the Court.

MR. POPE: Not the value, but the amounts due.

THE COURT: In view of the bankrupt condition of debtor, I am unable to see how the bondholders could possibly realize the value of their bonds, or how the value of the bonds are to be ascertained except by a public sale of debtor's property securing same. It appears to me that the effect of the last plan is to disregard what has been done in the equity receivership case, and to delay a final administration of the debtor's estate indefinitely. None of the bondholders are willing to adopt the plan; more than two-thirds of the bondholders have

by pleadings, affirmatively rejected it, and more than 50% of the unsecured creditors have affirmatively declined to accept the plan. If I should adopt it, or, if I should overrule the motion to dismiss the petition, it would amount to cramming down the throats of these secured creditors, a plan which they almost unanimously reject. I would be taking from them a substantive right that they have in the property, and the very best that could be said of it—the best excuse that the Court could offer—would be that it would postpone their right to a public sale of the property to such time as the Court might see fit to sell it. That is the most liberal construction in favor of the plan.

In view of the financial condition of debtor, a sale of its property is inevitable, and if I should adopt the last plan of the debtor which provides for scaling down of the face value of the bonds from one dollar to eighty cents, and returning the property to debtor, subject to the lien now existing in favor of the bondholders after crediting same with twenty cents on the dollar, and the Court to fix a rate of interest the debtor is to pay upon said bonds after crediting the same aforesaid, and if the Court should judicially determine the value of the bonds which are held by bondholders who are unwilling to accept eighty cents on the face value thereof, which amounts so fixed shall be declared to be the value of said bonds. Or, in the event the holders of said bonds are not willing to take the amounts thus fixed by the Court, in that event, the debtor to retain possession of its property subject to the lien now existing thereon to secure whatever amount the Court may determine is due would be, as announced by the Supreme Court in the case of Louisville Joint Stock Land Bank vs Radford, 295 U. S. 555, depriving the bondholders of substantive rights which cannot legally be done.

The plan is more or less an offer of composition provided for under Section 12 of the Bankruptcy Act; it was stated in the Radford Case that a composition is a voluntary offer, on the part of the debtor, and a voluntary acceptance on the part of the creditors; here, there is no acceptance by any of the secured creditors. If two-thirds of the secured creditors should agree to the plan, it would not deprive the minority of a property right for the Court to approve same. But, if none of the secured creditors are willing to accept the plan, and the Court should, notwithstanding, approve it, it would be depriving them of substantive rights in property, and would, therefore, be violative of the Fifth Amendment.

I can see no alternative except to dismiss the petition, and let the property be sold in the equity case.

FINAL ORDER AND DECREE

(Entered October 25, 1935)

This cause came on this day to be heard before the Honorable John J. Gore, Judge, upon the entire record and the motions to dismiss the debtor's petition and plans of reorganization, and after argument of counsel and due consideration thereof, the Court is of the opinion that said petition and the plans presented therein and thereby should be dismissed, except upon the ground that the petition was not filed in good faith, which ground of the motion is overruled, and for the reasons set out in the opinions of the Court, which are filed in this cause and ordered to be made a part of the record and a part of this decree, but need not be copied upon the minutes.

It is therefore ordered, adjudged and decreed that the petition of the debtor, Tennessee Publishing Company, and the various plans of reorganization set out therein and presented thereunder be and the same are hereby dismissed, and the costs taxed against the debtor, for which execution may issue.

GORE.

EXCEPTIONS OF C. O. CARPENTER, RECEIVER OF THE HOLSTON-UNION NATIONAL BANK, TO THE DECREE OVERRULING MOTION TO DISMISS PETITION UPON THE GROUND OF LACK OF GOOD FAITH

(Filed October 28, 1935)

Comes C. O Carpenter, Receiver of the Holston-Union National Bank, and excepts to the decree entered herein on October 25, 1935, insofar as said decree overrules the motion of bondholders to dismiss the petition of the debtor and plans of reorganization filed thereunder for lack of good faith.

C. O. CARPENTER, Receiver of Holston-Union National Bank.

By H. G. FOWLER,
Attorney.

FOWLER & FOWLER,
Solicitors.

DEBTOR'S EXCEPTIONS

(Filed November 7, 1935)

Comes the debtor, a corporation, and excepts to that part of the order of the Court entered herein on October 25, 1935, which sustained the various grounds of the motion to dismiss the petition for reorganization and the plans of reorganization, with the exception of the ground of its motion to dismiss alleging that the petition was not filed in good faith, which ground of the motion was overruled by the Court; and debtor also excepts to the grounds of the motion separately, except the ground alleging that the petition was not filed in good faith, and avers that each and all of said grounds of said motion so sustained should have been overruled and disallowed, and that the Court was in error in not so holding. Debtor also excepts to the action of the Court in dismissing the petition for reorganization; and also excepts to the action of the Court in dismissing and in failing to approve the first plan of reorganization filed by debtor; and also excepts to the action of the Court in dismissing the first plan of reorganization as amended, and in failing to approve the same; and also excepts to the action of the Court in dismissing the plan of reorganization filed on October 23, 1935, and in failing to approve the same. The debtor excepts also to the action of the Court as expressed in its opinion, made a part of the decree, in holding that any plan of reorganization proposed by debtor, it is necessary for debtor to have the approval of such plan, in writing, by at least two-thirds of the secured creditors, and/or two-thirds of the unsecured creditors of debtor corporation, and that without such approval the Court is without constitutional power or authority to approve any plan debtor might offer; and because the Court held in its said opinion that the Fifth Amendment of the Constitution of the United States forbids the Court to approve any plan of reorganization thereof not approved by at least two-thirds of the creditors affected thereby. Debtor also excepts to the action of the Court in failing to restore the properties of debtor to its possession pending the action of the Court on the petition for reorganization; and also excepts to the action of the Court in failing and declining to appoint a Trustee to take charge of the properties and assets of debtor, as provided by statute. Debtor also excepts to the action of the Court in failing and refusing to entertain the plan proposed by debtor to have the bonds outstanding against the property of

debtor appraised, as provided by statute, and judicially to fix the value thereof.

WHITE & HOWARD
LEWIS S. POPE
ROBERTS & ROBERTS,
Attorneys for Debtor.

This Oct. 31st, 1935.

Enter now for Oct. 31st, 1935.
JOHN J. GORE, Judge.

NOTICE OF APPEAL

(Filed November 8, 1935)

AMERICAN NATIONAL BANK,
PAUL M. DAVIS,
C O CARPENTER, RECEIVER, ETC.,
J. C. BRADFORD & H. O. INGRAM,
R. H. M. ROBINSON & C. T. JAFFRO, RECEIVERS, ETC.,
W. E. NORVELL, JR., ATTY:

Please take notice that the debtor, Tennessee Publishing Company, will perfect its appeal within the time allowed to the United States Circuit Court of Appeals for the Sixth Circuit sitting at Cincinnati, Ohio, from the judgment rendered in the proceeding of In The Matter of Tennessee Publishing Company, Debtor, No. 17141, in the United States District Court for the Middle District of Tennessee, Nashville Division, on October 25, 1935, and from the order dismissing the petition and plans of reorganization of Tennessee Publishing Company.

WHITE & HOWARD
LEWIS S. POPE
ROBERTS &ROBERTS,
Attorneys for Petitioner.

The undersigned hereby accept legal service on behalf of

their respective clients of the foregoing notice of appeal, and acknowledge receipt of copy thereof on this November 5, 1935.

CECIL SIMS,
Attorney for American National Bank and Paul M. Davis.

FOWLER & FOWLER,
Attorney for C. O. Carpenter, Receiver.

WILLIAM WALLER,
Attorney for J. C. Bradford and O. H. Ingram.

THOMAS H. MALONE,
Attorney for R. H. M. Robinson and C. T. Jaffro, Receivers.

W. E. NORVELL, JR.,
Attorney for certain bondholders.

PETITION FOR APPEAL

(Filed November 8, 1935)

Now comes Tennessee Publishing Company, a corporation, the debtor in the above entitled cause in which debtor filed its petition and plans of reorganization of said corporation, by its counsel Lewis S. Pope, White & Howard, and Roberts & Roberts, and feeling it is aggrieved by so much of the order and final judgment of this Court entered against it dismissing its petition and its plans of reorganization entered by this Court on October 25, 1935, and sustaining certain grounds of the motion to dismiss said petition and plans of reorganization, it hereby prays that it be allowed an appeal to the United States Circuit Court of Appeals for the Sixth Circuit sitting at Cincinnati, Ohio, and in connection with this petition, it herewith presents its assignments of error and prays that said appeal be allowed from said parts of said order, to said appellate court; that a citation be issued directed to all parties who have filed in writing in this case their refusal to accept the

plan of reorganization submitted by debtor including American National Bank, Paul M. Davis, C. O. Carpenter, Receiver of Holston Union National Bank, J. C. Bradford, O. H. Ingram, and R. H. M. Robinson and C. T. Jaffro, Receivers of Minnesota Ontario Paper Company, and their attorneys of record, and any other parties to whom your honor may direct that notice be given, to appear before the Circuit Court of Appeals for the Sixth Circuit to do and receive what may appertain to justice to be done in the premises, and that a transcript of the proceedings and papers upon which said order or judgment of dismissal was made, be duly authenticated and sent to the United States Circuit Court of Appeals for the Sixth Circuit.

TENNESSEE PUBLISHING COMPANY

By E. W. CARMACK, JR.
WHITE & HOWARD,
ROBERTS & ROBERTS
LEWIS S. POPE,
Attorneys.

ASSIGNMENT OF ERRORS FILED BY DEBTOR, TENNESSEE PUBLISHING COMPANY

(Filed November 8, 1935)

Comes debtor Tennessee Publishing Company, and believing and alleging that in the record of the proceedings in the above styled cause there is manifest error which occurred upon the trial of said cause, and upon which it relies for its prosecution of appeal herein, and assigns the following errors to-wit:

I

The Court erred in dismissing the petition of debtor filed on June 6, 1935, for its reorganization. The Court having held that said petition was filed in good faith, and had jurisdiction of debtor and its properties, should have sustained the same and allowed debtor to reorganize either upon one of the plans

submitted in this case or upon some other plan satisfactory to the Court.

II

The Court erred in dismissing and in failing to approve the first plan of reorganization filed on July 13, 1935 as amended.

III

The Court erred in dismissing and in failing to approve the plan of reorganization filed on October 23, 1935.

IV

The Court erred in holding that Section 77-B of the Bankruptcy Act requires that two-thirds of the creditors of debtor, secured and/or unsecured, should approve in writing the proposed plan of reorganization, and that since debtor has not secured the approval of such two-thirds, the Court would not and could not approve any plan of reorganization.

V

The Court erred in holding and adjudging that Section 77-B of said Bankruptcy Act in so far as its purports or attempts to empower and authorize the District Court to approve a plan of reorganization without the consent in writing of two-thirds of its creditors, secured and/or unsecured, is unconstitutional and void as being violative of the due process clause of the Fifth Amendment of the Federal Constitution.

VI

The Court erred in failing and refusing to hold that it had the full power and authority to approve a plan of reorganization, either with or without the approval in writing of two-thirds of the creditors, secured and/or unsecured, of debtor corporation.

VII

The Court should have held that Section 77-B is in all respects valid and constitutional, and that, under a proper construction thereof, the Court is empowered and authorized, without the consent of two-thirds of the creditors of debtor, to approve a plan of reorganization and complete the process of reorganization, and in all respects to confirm the plan of

reorganization under the bankruptcy laws and especially under Section 77-B thereof.

VIII

The Court erred in not allowing the petitioner, after its petition had been held to have been filed in good faith to submit any other or further plan of reorganization, acting upon the construction placed upon Section 77-B that because petitioner could not secure the approval of two-thirds of the creditors of debtor, secured and/or unsecured, that no plan it might offer would or could be approved by the Court.

IX

The Court erred in failing and refusing to return to debtor its property, he having sustained the petition as having been filed in good faith.

X

The Court erred in failing and refusing to appoint a trustee and to deliver property of debtor to him in the event that the Court refused to return the property to the debtor itself, the trustee should have been appointed as the statute provides.

XI

The Court erred in failing and refusing to permit the debtor to pay into Court in cash the appraised value of its properties as determined by the Court.

XII

The Court erred in failing and refusing to permit debtor to pay into Court in cash the appraised value as determined by the Court of the interest liens and claims of the various creditors.

XIII

The Court erred in failing and refusing to permit debtor to reorganize by taking its property subject to the liens and deeds of trust thereon as offered by the debtor in its plan of reorganization filed on October 23, 1935.

XIV

The Court erred in failing and refusing to ascertain and judicially determine the value of the alleged lien claims

against debtor, and in failing and refusing to ascertain and judicially determine the value of the property of debtor covered by the alleged deed of trust, and in failing and refusing to allow debtor to reorganize its business and affairs by taking over the assets covered by said deed of trust subject to the value of the lien claims and/or the value of the property of debtor covered by the deed of trust, and the Court erred in not permitting debtor to go forward with the reorganization plan proposed, or proceeding further with the steps necessary to completing and confirming a plan of reorganization, either in manner and form as proposed by debtor, or in such manner and form as would have met the approval of the Court and as submitted by debtor, notwithstanding the fact that it did not, on the hearing, have the approval in writing of two-thirds of the secured and unsecured claims against debtor.

Wherefore said Tennessee Publishing Company, debtor, prays that the judgment of the District Court may be reversed in the above styled cause.

ORDER ALLOWING APPEAL

(Entered November 8, 1935)

Be it remembered that this cause came on for hearing and was heard on November 5, 1935, by the Court on the petition of debtor, Tennessee Publishing Company, a corporation, to be allowed an appeal to the United States Circuit Court of Appeals for the Sixth Circuit, from the action of the Court in dismissing the petition and plans of reorganization of debtor, Tennessee Publishing Company, and taxing it with the costs and in failing and refusing to approve the plans of reorganization, which said petition was accompanied by an assignment of errors.

It is therefore considered, adjudged and ordered by the Court that the appeal prayed for by the petitioner, Tennessee Publishing Company, be granted, upon the execution of bond in the sum of Two Hundred and Fifty Dollars, conditioned as required by law. Said petitioner is allowed ten days from this date in which to file said bond for appeal and is allowed until November 30, 1935, in which to perfect its appeal by

having a transcript of the record printed and filed in the United States Circuit Court of Appeals for the Sixth Circuit.

Copy of appraisal of debtor's property made in the case of C. O. Carpenter, Receiver, vs. Tennessee Publishing Company and filed in this cause will be sent up in its original form, and shall constitute part of the record on appeal, without being copied.

Approved for entry:
GORE, Judge.

Approved as to form only:
CECIL SIMS, Attorney.
LAURENCE B. HOWARD.

CITATION

(Filed November 8, 1935)

You are hereby cited and admonished to be and appear at United States Circuit Court of Appeals for the Sixth Circuit to be held in the City of Cincinnati, in the State of Ohio, on the 30th day of November, 1935, pursuant to the appeal duly obtained and filed in the Clerk's office of the District Court of the United States in and for the Middle District of Tennessee, Nashville Division, in that certain proceeding wherein you as creditors of Tennessee Publishing Company, a corporation, debtor, are appellees and Tennessee Publishing Company, debtor, is appellant, and you are required to show cause, if any there be, why the order and decree in the said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable John J. Gore, Judge of the District Court of the United States for the Middle District of

Tennessee, Nashville Division, this the 5th day of November, 1935.

JOHN J. GORE,
United States District Judge.

Service of the above citation acknowledged this 5th day of November, 1935.

CECIL SIMS,
Attorney for American National Bank and Paul M. Davis.

FOWLER & FOWLER,
Attorney for C. O. Carpenter, Receiver.

WILLIAM WALLER,
Attorney for J. C. Bradford and O. H. Ingram.

THOMAS H. MALONE,
Attorney for R. H. M. Robinson C. T. Jaffro, Receivers.

W. E. NORVELL, JR.,
Attorney for Certain Bondholders.

APPEAL BOND

(Filed October 14, 1935)

Know all men by these presents, that we, The Tennessee Publishing Company, as principal, and E. W. Carmack and Oscar Noel as sureties, are held and firmly bound unto the United States for the use and benefit of all parties who may be interested, especially all stockholders, bondholders, and creditors secured and otherwise of The Tennessee Publishing Company, in the penal sum of Two Hundred Fifty ($250.00) Dollars, conditioned as follows:

Whereas, in the above entitled proceeding number 17141 in bankruptcy on the docket of the United States District Court

for the Middle District of Tennessee, Nashville Division, judgment was rendered and decree entered against the principal, The Tennessee Publishing Company, debtor, dismissing its petition for reorganization, its plans of reorganization, as amended, etc., all as appears of record, and the said Tennessee Publishing Company, debtor, has prayed and been allowed an appeal from said judgment to the United States Circuit Court of Appeals for the Sixth Circuit, sitting at Cincinnati;

Now, therefore, the condition of the above obligation is such that if the said The Tennessee Publishing Company, debtor, shall prosecute its said appeal with effect or else satisfy said judgment of the Court and all costs and damages that may be assessed against it, then the above obligation to be void; otherwise, to remain in full force and virtue.

THE TENNESSEE PUBLISHING COMPANY.
By E. W. CARMACK,
President.

E. W. CARMACK,
OSCAR NOEL,
E. W. CARMACK,
Surety.
OSCAR NOEL,
Surety.

Approved:
GORE, Judge.

AFFIDAVIT OF SURETIES

COUNTY OF DAVIDSON,
STATE OF TENNESSEE.

Personally appeared before me, Richard J. Poteet, a notary public in and for aforesaid county and state, the within named Oscar Noel, and E. W. Carmack, both to me well known, who make oath that they, and each of them severally and separately, have, within the jurisdiction of this Court, unencumbered property in excess of the sum and amount for which they have made themselves liable in the appeal bond hereto attached, and in evidence whereof they hereto affix their signatures imediately hereunder.

E. W. CARMACK.
OSCAR NOEL.

(SEAL) RICHARD J. POTEET, Notary Public.
My commission Expires Aug. 4, 1938.

PRAECIPE

(Filed November 8, 1935)

TO THE HONOROBLE E. L. DUDNEY, CLERK OF THE U. S. DISTRICT COURT AT NASHVILLE, TENNESSEE:

You are hereby requested to make a transcript of the record in this cause to be filed in the United States Circuit Court of Appeals of the Sixth Circuit at Cincinnati, Ohio, pursuant to an appeal allowed in said cause and to include in such transcript of record the entire record in this proceeding including the following:

(1) Captions of the Court.
(2) Copies of all pleadings.

(3) Copies of all decrees and minute entries of the Court in said cause.

(4) Copies of all proposed plans of reorganization with amendments and supplements thereto filed by petitioner in this cause.

(5) Copies of all motions and answers thereto made and filed in this cause.

(6) Copies of all affidavits and exhibits filed in this cause.

(7) Copy of the appraisal of the properties of debtor made by American Appraisal Company in the case of C. O. Carpenter, Receiver, filed in this cause, the same to be made a part of the transcript of record in this cause by attaching the same in its original form.

(8) Copy of all opinions delivered by the Court in this cause.

(9) Copy of exceptions filed by the petitioner.

(10) Copy of petitioner's petition for appeal.

(11) Copy of petitioner's assignments of error.

(12) Copy of notice of petitioner's appeal and acceptance of service thereon.

(13) Copy of petitioner's citation and service of creditors' counsel thereon.

(14) Copy of petitioner's bond on granting appeal.

(15) Copy of this praecipe for transcript.

(16) Copy of Clerk's certificate.
This 5th day of November, 1935.

ROBERTS & ROBERTS,
LEWIS S. POPE,
WHITE & HOWARD,
Attorneys for Petitioner.

Service of the foregoing praecipe accepted this 6th day of Nov., 1935.

CECIL SIMS,
Attorney for American National Bank and Paul M. Davis.
FOWLER & FOWLER,
Attorney for C. O. Carpenter, Receiver, Etc.
WILLIAM WALLER,
Attorney for J. C. Bradford and O. H. Ingram.
THOMAS H. MALONE,
Attorney for R. H. M. Robinson C. T. Jaffro, Receivers.
W. E. NORVELL, JR.,
Attorney for Certain Bondholders.

CLERK'S CERTIFICATE.

UNITED STATES OF AMERCIA, MIDDLE DISTRICT OF TENNESSEE.

I. E. L Dudney, Clerk of the District Court of the United States in and for the Middle District of Tennessee, do hereby certify that the foregoing pages contain a true, correct and complete record as called for in the praecipe filed by the attorneys for the appellant herein of the matter set out in the caption hereto, as the same appears from the records and files in this office.

Witness my hand as Clerk and seal of said Court at Nashville, Tennessee, on this 18th day of November, 1935, and of the independence of the United States of Omerica, the one hundred fifty-ninth year.

E. L. DUDNEY,
Clerk.
HAL H. CLEMENTS, Jr.,
Chief Deputy Clerk.

No.....

In The

Supreme Court of the United States

IN RE:

TENNESSEE PUBLISHING COMPANY, Debtor

Petition for Certiorari

TENNESSEE PUBLISHING COMPANY, Debtor
Petitioner

AMERICAN NATIONAL BANK
C. O. CARPENTER, RECEIVER, ETC.
J. C. BRADFORD AND O. H. INGRAM
R. H. M. ROBINSON AND C. T. JAFFRO,
RECEIVERS, ETC.,

COMMERCE UNION BANK
BROADWAY NATIONAL BANK, ET AL

Appellees

UNITED STATES OF AMERICA
UNITED STATES CIRCUIT COURT OF APPEALS
SIXTH JUDICIAL CIRCUIT

Pleas and proceedings had at a regular term of the United States Circuit Court of Appeals for the Sixth Circuit begun on the 1st day of October, 1935, before Honorables Charles

Certification of Clerk

H. Moorman, Charles C. Simons and Florence E. Allen:

TENNESSEE PUBLISHING COMPANY, Debtor
Petitioner

AMERICAN NATIONAL BANK
C. O. CARPENTER, RECEIVER, ETC.
J. C. BRADFORD AND O. H. INGRAM
R. H. M. ROBINSON AND C. T. JAFFRO,
RECEIVERS, ETC.,

COMMERCE UNION BANK
BROADWAY NATIONAL BANK, ET AL

Appellees

Be it remembered that heretofore, to-wit, on November 20, 1935, a transcript of the record in the above styled cause, pursuant to an appeal from the District Court of the United States for the Middle District of Tennessee, Nashville, Division, was filed in the office of the Clerk of said United States Circuit Court of Appeals for the Sixth Circuit at Cincinnati, Ohio, which said transcript was filed and docketed in said Circuit Court as No. 7266 and cross-appeal was docketed as No. 7267; also petition for leave to appeal under Bankruptcy Act, Section 24-B, which was granted, which is as follows, to-wit:

DEBTOR'S PETITION FOR LEAVE TO APPEAL UNDER BANKRUPTCY ACT, SECTION 24-B

TO THE HONORABLE JUDGES OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT:

Your petitioner, Tennessee Publishing Company, the above named debtor, conceiving itself aggrieved by the final order of the United States District Court for the Middle District of Tennessee, Nashville Division, made by Honorable John J. Gore, Judge thereof, on the 25th day of October, 1935, dismissing the petition for reorganization filed by debtor, and refusing to approve the plans for reorganization submitted and filed by it, files this its petition, addressed to the discretion of this Honorable Court, for leave to appeal in matter of law from said order of the District Court.

Your petitioner refers to the assignment of errors filed by it simultaneously with this petition, setting forth the errors made by the Court below, and giving the grounds for this appeal, and makes said assignment of errors Exhibit 1 hereto and a part hereof.

Your petitioner would show that its property and affairs had been administered by a Receiver appointed by the United States District Court for the Middle District of Tennessee in the case of C. O. Carpenter, Receiver, et al v. Tennessee Publishing Company, said receivership having commenced on .....day of March, 1933.

Shortly before the 6th day of June, 1935, your petitioner, with proper corporate authorization, made certain financial arrangements to the end and purpose of reorganizing under Section 77-B of the Bankruptcy Act, and in furtherance of said propositions, did, on the 6th day of June, 1935, file its petition for corporate reorganization under Section 77-B of the Bankruptcy Act in the United States District Court for the Middle District of Tennessee, Nashville Division.

That on the same day the Judge of the United States District Court entered an order reciting that said petition was properly filed, and filed in good faith, and fixing a thirty day period within which any person aggrieved by said order should show cause why the same should not be sustained.

That several of the parties owning the bonds of your petitioner filed answers attempting to have said order set aside and the matter came on for hearing on the 13th day of July, 1935. That at this hearing petitioner presented its first plan

or reorganization and asked that the Court approve the same as provided in Section 77-B, and also asked that debtor's property be returned to it under certain safeguards and certain guarantees, and your petitioner further asked that if the Court would not return its properties to it, a Trustee be appointed as provided in Section 77-B of the Bankruptcy Act to take charge of, manage and operate its said properties.

That reference is here made to said proposed plan of reorganization, as the same appears in the record, for the exact terms and conditions thereof, but in substance, said plan provided for the appraisal of debtor's property and the payment therefor in cash within a short period by the debtor in such manner and to such persons as might be ordered by the Court. Said plan asked in the alternative that if the Court thought proper an appraisal be made not of all its properties, but of the interest, claims and liens of its creditors in said property, and payment of the value of these interests, claims and liens by the debtor in cash within a short period.

Petitioner further asked that it be allowed to take its properties, and operate the same subject to the orders of the Court, and petitioner tendered into court $20,000.00 in cashier's checks as an evidence of its ability to finance said operation and as a guarantee that it would carry out its proposal, and specifically that it would guarantee interest to the lien holders of the appraised value of the property covered by a deed of trust. Said proposal also contained provisions guaranteeing to reduce the operating losses pending the final confirmation of the plan.

At the conclusion of said hearing on July 13, 1935, the Court took the matter under advisement and no decision was rendered therefrom or thereon until the order complained of in this matter, to-wit, the decree entered on October 25, 1935. The Court did, however, at that time state that it desired an appraisal made of the properties and such appraisal was thereafter made by the American Appraisal Company, who was appointed by the Court for that purpose, originally in the receivership case, but thereafter by proper order of the Court made the appraisal in this matter, the Court announcing at the time the appraisal was ordered that same would be used in both cases.

That your petitioner continued to press the matter, and conceiving that the Court might have some doubt as to the financial arrangements it had made for the purpose of reorganizing itself proposed to submit a guarantee to the Court, with such sureties thereon as would fully satisfy the Court

that it would pay up to $300,000.00 of the appraised price of said property. The Court likewise took this matter under advisement and no action was taken thereon until the final order entered on October 25, 1935.

That thereafter, towit, on or about the ..... day of ...., 1935, conceiving that the Court might be in some manner hesitant or disturbed by the provisions in its original plan providing for its issuance of new bonds, this petitioner filed another amended and supplemental plan of reorganization which eleminated the provisions of the issuance of new bonds and simply provided that petitioner would pay into court in cash the appraised value of its properties, or if the Court so ordered the appraised value of the interest, claims and liens of its creditors in and to said property.

A number of hearings were had before the Court until finally at hearing on or about Oct. 17, 1935, the Court delivered an opinion in which he held and found, both as a matter of fact and of law, the Judge's opinion being made a part of the record which is attached hereto, that the petition was properly filed, and in good faith, and in accordance with the requirements of Section 77-B of the Bankruptcy Act, and that the same had been diligently prosecuted by the debtor and its attorneys. The Court also held that the plan of reorganization provided that the debtor would pay in cash the amount fixed by the appraisal and the Court, that the property, belonging to the debtor, both that included under the deed of trust and that not so included, or the value of the securities, towit, the bonds held by the secured creditors. The Court further held that the plan of reorganization was not approved by as many as two-thirds of the holders of the bonds, on the contrary, that more than two-thirds had indicated by pleadings and personal appearance in Court that they were opposed to the plan of reorganizatoin, and further that more than fifty per cent of the unsecured creditors opposed the plan. This being true, the Court held in his opinion on or about Oct. 17, 1935, that the plan of reorganization could not be approved by the Court as, in the opinion of the Court, it would be and is a violation of the constitutional rights of said secured creditors because it took from them certain substantive vested rights in property without due process of law and would be and is in violation of the Fifth Amendment to the Constitution of the United States. Therefore, and for this reason, the Court refused and declined to approve the plan of reorganization as correctly and distinctly set out in his opinion, made a part of the record herein.

Immediately after this opinion was delivered by the Court

further time was asked by the debtor to submit an additional plan of reorganization. Said motion was granted by the Court extending the time for a week, and on October 23, 1935, another and additional plan of reorganization was submitted to the Court, which plan, in substance, provided that the debtor would reorganize its affairs and accept the return of its property subject to all the liens and claims, and only asking the Court to extend the time for the payment of the bonds secured by the mortgage, they having been declared to be due by the bondholders on account of the default of payment of interests. Said request contained in the plan of reorganization simply amounted to restoring the date of maturity and payment of said bonds to that fixed by the mortgage itself and appearing on the face of the bonds. Said plan further provided that after the Court had determined the full amount due on the bonds that debtor would take its property subject to the payment of that amount, with liens thereon to secure the same, as provided in the deed of trust, and to pay the interest thereon at such rate as the Court saw proper to fix. Said debtor proposed in the plan to furnish the Court sufficient and satisfactory guarantees of its ability to carry out the plan as submitted.

The case came on finally to be heard on the 25th day of October, 1935, and especially upon consideration of the plan last above mentioned, at which time the Court adhered to its former opinion delivered on October 17, 1935, and dismissed debtor's plan of reorganization, including all the plans of reorganization and the petition filed on June 6, 1935, at which time a final order of the Court was entered and an opinion of the Court delivered, copy of which is made part of the record herein.

Petitioner further alleges that no witnesses were introduced before the Court, no testimony heard, and that the Court's decision was based solely upon the record as made by the pleadings, plans of reorganization and exhibits.

In order that this Honorable Court may have before it, in exercising its discretion in granting or refusing this appeal, a complete history and record of this proceeding, a true and correct transcript thereof, is filed herewith and asked to be treated as a part hereof.

Petitioner further alleges that said order of the District Court is erroneous in matter of law in the particulars specified and set out in the assignment of errors simultaneously filed herewith. To be more specific, it is averred that the District Court committed error in dismissing the petition of petitioner filed on June 6, 1935, for the purpose of effecting its reorganization, and in failing to approve and dismissing

the first plan of reorganization and also the second plan of reorganization. It is further averred that the Court erred in holding that as a matter of law, Section 77-B of the Bankruptcy Act requires the approval of two-thirds of the creditors of petitioner of the proposed plan of reorganization, and in refusing to approve the plans submitted and filed by debtor because of the want of such approval.

It is further averred that the District Court was in error in failing and refusing to approve the plans of reorganization, as amended, without the consent of approval in writing of two-thirds of petitioner's creditors on the ground that to do so would violate the due process clause of the Fifth Amendment of the Constitution of the United States. The District Court should have held that Section 77-B of the Bankruptcy Act is in all respects, in so far as this petitioner is concerned constitutional and valid and that the Court could approve and confirm a plan of reorganization notwithstanding the fact that petitioner did not have the consent and approval in writing of two-thirds of its creditors.

It is further averred that the District Court was in error in failing and refusing to return the properties of debtor to it, or appoint a Trustee, and return the properties to him, after having held its petition for reorganization to have been properly filed and in good faith, such refusal being in violation of Section 77-B of the Bankruptcy Act.

Petitioner would further show to the Court that it has assembled new capital and experienced newspaper publishers for the reorganization of its affairs and has sought in every way possible to comply with the terms and requirements of the Statute, being Section 77-B of the Bankruptcy Act, to effect the reorganization of its business and to put it back upon its feet and at the same time salvage for its unsecured creditors certain interests in its new business by issuing preferred stock therein to the extent of $100,000.00 and to salvage to its preferred creditors a certain amount of their investment by issuing preferred stock to them to the extent of $25,000.00 and at the same time to pay in cash to the secured creditors the full value of the property included in the deed of trust or the value of the bonds themselves, either or both of which to be fixed by the Court, and under this plan of reorganization pay to the secured creditors the full value of their properties or securities and at the same time preserve to the unsecured creditors at least a portion of their claims against the debtor.

The learned Judge, as indicated by his opinion, looked with considerable favor to the petitioner's plans of reorganization, but felt constrained to overrule and dismiss the same, chiefly

if not alone, upon the grounds that he was of the opinion that it violated the constitutional rights of the secured creditors, in which opinion, the petitioner alleges, the Court has United States, and this error of the learned Dist. Judge constitutes and is the chief error assigned by petitioner, which it seeks to have this Honorable Court review and reverse.

Wherefore, your petitioner prays that it may be allowed in the descretion of this Honorable Court, to appeal in matter of law herein, that the prayer of said petition be granted, and a citation be issued to American National Bank, Paul M. Davis, C. O. Carpenter, Receiver, etc., J. C. Bradford, O. H. Ingram, R. H. M. Robinson, and C. T. Jaffro, Receivers, Etc., and W. E. Norvell Jr., Attorney, creditors, who are the only parties having intervened in this proceeding and made themselves parties hereto, commanding them to appear before the United States Circuit Court of Appeals for the Sixth Circuit, to do and receive what may appertain to justice to be done in the premises, and that a transcript of the record and proceedings in said proceeding, duly authenticated, may be submitted to the United States Circuit Court of Appeals for the Sixth Circuit.

This November ..... 1935.

TENNESSEE PUBLISHING COMPANY.

By E. W. CARMACK,
Petitioner.

LEWIS S. POPE
WHITE AND HOWARD
ROBERTS & ROBERTS

Attorneys for Petitioner.

STATE OF TENNESSEE
COUNTY OF DAVIDSON

Personally appeared before me, a Notary Public in and for the State and County aforesaid, E. W. Carmack, Jr., who makes oath that he is President of Tennessee Publishing Company, a corporation, petitioner hereinabove, that he is familiar with the facts set forth in the foregoing petition and is duly authorized to make this verification, and that the facts stated in the foregoing petition are true to the best of his knowledge, information ad belief.

Subscribed and sworn to before me this 18th day of Nov., 1935.

MAYVER MOORE,
Notary Public.

(SEAL)

My Commission expires May 10, 1938.

NOTICE OF FILING PETITION FOR REVIEW

To:

AMERICAN NATIONAL BANK,
PAUL M. DAVIS,
C. O. CARPENTER, RECEIVER, ETC.,
J. C. BRADFORD & O. H. INGRAM,
R. H. M. ROBINSON & C. T. JAFFFO, RECEIVERS, ETC.,
W. E. NORVELL, JR., ATTORNEY.

Please take notice that on the 20th day of November at 10:00 o'clock A. M., we will file in the Clerk's office of the United States Circuit Court of Appeals for the Sixth Circuit, in the City of Cincinnati, a petition for leave of appeal, to superintend and revise, and for review in the above entitled proceeding, a copy of which petition is annexed hereto and made a part of this notice.

LEWIS S. POPE,
WHITE & HOWARD,
ROBERTS & ROBERTS,
Attorneys for Petitioner.

Service of the above notice, together with copy of the petition is hereby acknowledged on this November 5, 1935.

CECIL SIMS,
Attorney for American National Bank and Paul M. Davis.

FOWLER & FOWLER,
Attorney for C. O. Carpenter, Receiver.

WILLIAM WALLER,
Attorney for J. C. Bradford and O. H. Ingram.

THOMAS M. MALONE,
Attorney for R. H. M. Robinson C. T. Jaffro, Receivers.

W. E. NORVELL,
Attorney for Certain Bondholders.

United States Circuit Court of Appeals

FOR THE SIXTH CIRCUIT

No. 7266

TENNESSEE PUBLISHING COMPANY

vs.

AMERICAN NATIONAL BANK, C. O. CARPENTER, RECEIVER, ET AL,

CAUSES ARGUED AND SUBMITTED—January 7, 1936.
(Before: Moorman, Simons and Allen, JJ.)

These causes are argued by Lewis S. Pope and Albert Roberts for Tennessee Publishing Compnay; by Cecil Sims and H. G. Fowler for American National Bank, et al. and C. O. Carpenter, Receiver, and are submitted to the Court.

APPEAL from the District Court of the United States for the Middle District of Tennessee.

THIS CAUSE came on to be heard on the transcript of the record from the District Court of the United States for the Middle District of Tennessee, and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered, adjudged and decreed by this Court that the decree of the said District Court in this cause be and the same is hereby affirmed.

Enter:
(Signed) CHARLES C. SIMONS.

Filed: Feb. 13, 1936.

A true copy.

ATTEST: J. W. MENZIES,
Clerk, U. S. Circuit Court of
Appeals, Sixth Circuit.

Mandate of Court of Appeals
Mandate in Case of Tennessee Publishing Co., v. American National Bank
(Filed March 16, 1936)

THE PRESIDENT OF THE UNITED STATES OF AMERICA

To the Honorable, the Judges of the District Court of the United States for the Middle District of Tennessee—GREETING:

WHEREAS, lately in the District Court of the United States for the Middle District of Tennessee, before you or some of you, in the Matter of Tennessee Publishing Company, Debtor, a decree was entered on the 25th day of October, 1935, overruling motion of C. O. Carpenter, Receiver of Holston-Union National Bank, to dismiss the petition of the debtor and plans of reorganization for lack of good faith, and dismissing the petition of the debtor, Tennessee Publishing Company, and the various plans of reorganization set out therein,

AND WHEREAS, the said Tennessee Publishing Company appealed to this court as by the inspection of the transcript of the record of the said District Court, which was brought into the United States Circuit Court of Appeals for the Sixth Circuit by virtue of an appeal agreeably to the Act of Congress, in such cases made and provided, fully and at large appears.

AND WHEREAS, in the present term of October, in the year of our Lord, one thousand nine hundred and thirty-five, the said cause came on to be heard before the said United States Circuit Court of Appeals for the Sixth Circuit, on the said transcript of record, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered, adjudged and decreed by this Court that the decree of the said District Court in this cause be and the same is hereby affirmed.

YOU, THEREFORE, ARE HEREBY COMMANDED that such proceedings be had in said cause, in conformity with the opinion and decree of this court, as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

WITNESS the Honorable CHARLES EVANS HUGHES, Chief Justice of the United States, the sixteenth day of March in the year of our Lord one thousand nine hundred and thirty-six.

J. W. MENZIES,
(SEAL) Clerk, United States Circuit Court of Appeals for the Sixth Circuit.

Mandate of Court of Appeals
Mandate in Case of C. O. Carpenter, Receiver, v. Tennessee Publishing Co.
(Filed March 16, 1936)

THE PRESIDENT OF THE UNITED STATES OF AMERICA

To the Honorable, the Judge of the District Court of the United States for the Middle District of Tennessee
GREETING:

WHEREAS, lately in the District Court of the United States for the Middle District of Tennessee, before you or some of you, in the Matter of Tennessee Publishing Company, Debtor, a decree was entered on the 25th day of October, 1935, overruling motion of C. O. Carpenter, receiver of Holston-Union National Bank, to dismiss the petition of the debtor and plans of reorganization for lack of good faith, and dismissing the petition of the debtor, Tennessee Publishing Company, and the various plans of reorganization set out therein,

AND WHEREAS, the said C. O. Carpenter, Receiver, etc., appealed to this Court as by the inspection of the transcript of the record of the said District Court, which was brought into the United States Circuit Court of Appeals for the Sixth Circuit by virtue of an appeal agreeably to the Act of Congress, in such cases made and provided, fully and at large appears.

AND WHEREAS, in the present term of October, in the year of our Lord, one thousand nine hundred and thirty-five the said cause came on to be heard before the said United States Circuit Court of Appeals for the Sixth Circuit, on the said transcript of record, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered, adjudged, and decreed by this Court that the cross-appeal of C. O. Carpenter, Receiver, be and the same is hereby dismissed.

YOU, THEREFORE ARE HEREBY COMMANDED THAT such proceedings be had in said cause, in conformity with the opinion and decree of this Court, as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the Honorable Charles Evans Hughes, Chief Justice of the United States, the sixteenth day of March in the year of our Lord one thousand nine hundred and thirty-six.

J. W. MENZIES,
Clerk United States Circuit Court of Appeals for the Sixth Circuit.

(SEAL)

IN THE

United States Circuit Court of Appeals

FOR THE SIXTH CIRCUIT,

AT CINCINNATI, OHIO.

In Re

TENNESSEE PUBLISHING COMPANY, Debtor

PETITION FOR REORGANIZATION

APPEAL AND CROSS-APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE, NASHVILLE DIVISION.

It appearing to the Court that a decree was entered in this cause on February 13, 1936, confirming the action of the District Court in dismissing the debtor's proceedings for reorganization, and further dismissing the cross-appeal of certain bond holders and that the mandate of this Court has heretofore issued to the District Court of the United States for the Middle District of Tennessee at Nashville, now upon application of the debtor and with consent of the bondholders as evidenced by the signature of their respective counsel to this decree, it is ordered tha tthe said mandate be recalled and withheld pending the application of the debtor to the Supreme Court of the United States for the writs of certiorari and supersedeas.

BASS, BERRY & SIMS, Atty.
FOWLER & FOWLER, Attys.
WM. WALLER, Atty.
W. E. NORVELL, Jr.
MALONE & WADE, Attys.
WHITE & HOWARD,
LEWIS S. POPE,
ROBERTS & ROBERTS, Attys.
TRABUE, HUME & ARMISTEAD, Attys.

(Filed Feb. 13, 1936)

Nos. 7266-7267

United States Circuit Court of Appeals

SIXTH CIRCUIT

In Re Tennessee Publishing Company, Debtor.

Tennessee Publishing Company, Appellant,

No. 7266 v.

American National Bank, C. O. Carpenter, Receiver, et al., Appellees.

C. O. Carpenter, Receiver, Cross-Appellant,

No. 7267 v.

Tennessee Publishing Company, Cross-Appellee.

APPEALS from the District Court of the United States for the Middle District of Tennessee.

Decided February 13, 1936.

Before MOORMAN, SIMONS and ALLEN, Circuit Judges.

SIMONS, Circuit Judge. The main appeal is from a final order and decree dismissing the debtor's petition and plan for corporate reorganization under the provisions of * 77 (b) of the Bankruptcy Act as amended. The appeal was allowed by the District Judge, but the debtor later conceiving the appeal to be governed by * 24 (b), filed a petition with this

court for leave. It appearing that the petition was timely, we treat the appeal as having been allowed, and an order to that effect may be entered. The cross-appeal is from a final order incorporated in the decree overruling a motion to dismiss the debtor's petition on the ground that it was not filed in good faith as provided by the statute. The cross-appeal was likewise allowed by the District Judge, but no petition, timely or otherwise, for its allowance here was presented. A motion to dismiss the cross-appeal is before us. Regarding the main appeal as properly allowed under § 24 (b), **Vitagraph, Inc.,** v. **St. Louis Properties Corp.,** 77 Fed. (2d) 590 (C. C. A. 8); **Credit Alliance Corp.** v. **Atlantic, Pacific & Gulf Refining Co.,** 77 Fed. (2d) 595 (C. C. A. 8); **Campbell** v. **Alleghany Corp.,** 75 Fed. (2d) 947, 955 (C. C. A. 4); **Humber** v. **Bankers Trust Co.,** 70 Fed. (2d) 265 (C. C. A. 6), and regarding it also, as will later appear, as raising the question generally of the validity of the decree, whether based upon valid or invalid grounds, we give no consideration to the cross-appeal, and it may be dismissed.

The Tennessee Publishing Company, designated as the debtor, according to the statute, had for many years published both a morning and an evening newspaper in Nashville, Tennessee. On March 3, 1933, by general creditors' bill, its affairs were placed in charge of a receiver appointed by the District Court. The proceedings were filed by appellee Carpenter, receiver of a closed bank, which held $28,000 of the debtor's bonds, which were part of an issue of $750,000 dated November 1, 1928. The rate of interest borne by the bonds, and their maturity dates, nowhere appears, but they were secured by a deed of trust executed by the debtor, which provided that upon default in the payment of interest or principal the security might be foreclosed and sold at public auction, either through proceedings in equity or by advertisement.

The equity bill averred operating losses sustained by the debtor during the years 1929 to 1932. Losses continued during the receivership, but at a reduced rate. The usual reference to a master for consideration of claims followed, with the result that claims were filed in the total amount of approximately $1,500,000. A final hearing was set for June 6, 1935, and it was then the reasonable expectation of all parties in interest that a sale of assets would be ordered and the receivership terminated.

On June 5, 1935, Carmack, son of a former editor of the debtor's papers, acquired from the Leas, then its owners, all

of the debtor's common stock. He immediately had himself elected president, and instituted the debtor proceedings here involved under ℵ 77 (b). His first reorganization plan being objected to by the various classes of creditors, a second and a third plan of reorganization with modifications thereof followed. All were vigorously opposed by each interest concerned save for approval by a relatively small number of unsecured creditors. Not any of the bondholders gave assent to the plans proposed, and about 50% of the unsecured creditors have affirmatively opposed all reorganization plans.

Section 77 (b) provides for a scheme of corporate reorganization similar in many of its aspects to that provided for the reorganization of railroads engaged in interstate commerce by ℵ 77, discussed and held constitutionally valid in general scope and application in **Continental Bank** v. **Chicago, Rock Island & Pacific Railway Co.,** 294 U. S. 648. It provides that upon the filing of a petition for reorganization the court shall enter an order approving its filing if satisfied that the petition complies with the section and has been filed in good faith. The plan of reorganization shall include provisions modifying or altering the rights of creditors generally, or any class of them, either through the issuance of new securities or otherwise. Sub-section (e), insofar as pertinent, is as follows:

> "A plan of reorganization shall not be confirmed until it has been accepted in writing, . . . and such acceptaance shall have been filed in the proceeding by or on behalf of creditors holding two-thirds in amount of the claims of each class whose claims have been allowed or would be affected by the plan . . . ; **Provided, however,** That such acceptance shall not be requisite to the confirmation of the plan by any creditor or class of creditors (a) whose claims are not affected by the plan, or (b) if the plan makes provision for the payment of their claims in cash in full, or (c) if provision is made in the plan for the protection of the interests, claims or liens of such creditor or class of creditors in the manner provided in subdivision (b), clause (5) of this section."

Insofar as the reorganization permitted by ℵ 77 (b) requires approval by two-thirds of the creditors of each class, and insofar as such approval is not requisite to confirmation from creditors whose claims are not affected, or for the payment of which cash is provided, 77 (b) follows substantially the provisions of ℵ 77. It departs from that section in clause (c) of the proviso, which makes approval of creditors unnecessary "if provision is made in the plan for the protection of the in-

terests, claims or liens of such creditor or class of creditors in the manner provided in subdivision (b) clause (5) of this section."

It therefore becomes necessary to consider sub-section (b), clause (5), which provides that the plan of reorganization,

> "Shall provide in respect of each class of creditors of which less than two-thirds in amount shall accept such plan (unless the claims of such class of creditors will not be affected by the plan, or the plan makes provision for the payment of their claims in cash in full), provide adequate protection for the realization by them of the value of their interest, claims, or liens, if the property affected by such interests, claims or liens is dealt with by the plan, either as provided in the plan (a) by the transfer or sale of such property subject to such interest, claims or liens, or by the retention of such property by the debtor subject to such interest, claims or liens, or (b) by a sale free of such interest, claims or liens at not less than a fair upset price and the transfer of such interest, claims or liens to the proceeds of such sale; or (c) by appraisal and payment either in cash of the value either of such interest, claims or liens, or at the objecting creditors' election of the securities allotted to such interest, claims or liens under the plan, if any shall be so allotted; or (d) by such method as will in the opinion of the judge, under and consistent with the circumstances of the particular case, equitably and fairly provide such protection;"

It will be observed that * 77 (b), unlike * 77, furnishes a method by which a reorganization plan may be put into effect in the event that the debtor is unable to secure consent to its plan of two-thirds of each class of creditors to be affected thereby, not only without their approval, but (by necessary implication) despite their opposition. The plan may provide under sub-section (b) (5) for the sale of the property subject to lien, for its sale free of liens and the transfer of the liens to the proceeds or for the method recited in clauses (c) and (d). With the first two of the methods incorporated in the sub-section we are not concerned, because the debtor does not desire to have the property sold either free from or subject to liens. It wishes to secure possession of the property and to resume its operation. We are concerned therefore only with the methods provided by which the debtor may regain its property without consent of creditors, have it appraised, and then relieve itself of obligation by paying each of them in cash, either (1) of the value of their interests,

claims or liens, or (2) at the creditors' election (of the value) of the securities allotted to such interests, claims or liens, if any shall be so allotted; or (3) by such method as will in the opinion of the judge equitably and fairly provide such protection.

The present debtor's several plans of reorganization, particularly the third, are in recognition of the futility under existing circumstances of securing the consent of two-thirds of its creditors of each class. It proceeds upon the assumption that such consent is not necessary by framing its reorganization plans under the alternative method provided by sub-section (b) (5). We assume it to be unnecessary to give detailed consideration to the first or second plan for, faced with a contention that neither is feasible, and that each would invade vested constitutional rights, it presented its third plan and modifications thereof, and we may assume that this represents up to the time of the decree, its ultimate effort to repel attack upon the feasibility of reorganization, and upon asserted invalidity in the application of the statute.

We confess our inability to understand the debtor's proposed reorganization plan in all of its phases, even after diligent study, effort to separate argument from concrete proposals, and an earnest attempt to reconcile apparently conflicting clauses. This much, however, seems reasonably clear: The debtor desires to have all the property which for two years has been in the possession of the equity receiver, including unmortgaged property, returned to it, subject to such liens as the court shall determine. It proposes that the bond holders shall have their securities scaled down to 80% of their face value, and that the court shall fix a reasonable rate of interest in place of the agreed interest. Non-assenting bond holders are to have the value of their securities fixed by the court, and to have a lien on the mortgaged property for such value, though it is also proposed to pay non-assenting bond holders such ascertained value in cash. The debtor proposes to pay for the unmortgaged property in the hands of the receiver the sum of $40,000 in cash at a time to be fixed by the court. For the further purpose of protecting bond holders, the debtor proposes to deposit $10,000 to pay interest in advance upon the bonds for a three months' period, but nothing is provided in the plan with respect to the defaulted interest upon the bonds during the two years that the debtor's properties have been in the hands of the receiver. Then follow provisions for a bond issue and for Class A and Class B preferred stock, out of the proceeds of which present unsecured creditors and preferred stock holders are to be compensated.

We make no effort to state them, for they are wholly incomprehensible. The court is also asked to reascertain the present holders of the debtor's mortgage bonds, and the amount due each bond holder, although a judicial determination as to these matters has already been had in the equity proceedings by a master with his report presumably confirmed by the court without objection thereto by the debtor, though a party to the receivership proceedings. From the argument, interwoven with the proposals of the submitted plan, it appears that the debtor is informed that some of the present bond holders have paid for their bonds an amount less than their face value, and it appears, inferentially at least, that the debtor desires the court to fix the amount due bond holders who have paid for their holdings since the beginning of the receivership an amount less than their face value, the amount so paid, and then have such amount scaled down to eighty cents upon the dollar. We are pointed to no provision of the statute which permits this to be done, and independent inquiry fails to disclose any.

The reorganization plan is opposed on the ground that it is not presented in good faith, and that any scaling down of secured indebtedness or of agreed interest, or denial of the right of lien holders to have the mortgaged property sold at public sale in accordance with the terms of the trust deed, is taking the property of the bondholders without due process in violation of the Fifth Amendment to the Constitution of the United States. While the court found the plan to have been presented in good faith, it is urged that the court erroneously applied the law; that good faith is not a question of honest motive or intention, but is to be determined by the feasibility of the plan, and a reasonable expectation that it will be successful, in reliance upon **Manati Sugar Company** v. **Mock, et al.,** 75 Fed. (2d) 284 (C. C. A. 2), and **In re 235 West 46th Street Company, Inc.,** 74 Fed. (2d) 700 (C. C. A. 2). The District Judge rejected the contention as to absence of good faith, but declared sub-section (b) (5) insofar as it permits adjustment of liens without the consent of creditors, constitutionally invalid and dismissed the petition.

We have first to consider whether the question of the debtor's good faith in submitting its proposed plan of organization is properly before this court upon the main appeal. This involves a consideration as to whether the decision below upon that question involves an issue of law cognizable upon appeal under § 24 (b). It is clear from the court's memoranda that in deciding the issue of good faith it was guided mainly by a consideration of the honesty of purpose on the part of

the debtor in submitting its plan. *77 (b) does not undertake to define good faith. We think it clear, however, in agreement with the Second Circuit, that something more than sincerity of intention was intended. The purpose of the statute is to relieve distressed debtor corporations, and to provide the mechanics for reorganization where reasonable expectation of continued useful existence may be fairly entertained. This being so, something more must be demonstrated by the debtor than mere honesty or sincerity of purpose. If not, then the way is open to the exploitation of every involved corporation by visionaries whose illusory and optimistic imaginations outrun their business judgments, and the interest of every legitimate creditor is at the mercy of debtors whose sole hope of financial salvation is an abiding faith in miracles. If we are right in this, there was erroneous application of the law in the finding of good faith, and the decree dismissing the petition should upon familiar principles governing appeals in equity be affirmed if right, however erroneous may be any given conclusion of law.

It appears from the record that the total assets of the debtor upon fair appraisal are worth less than $300,000. The bonded indebtedness exceeds $900,000, and the unsecured indebtedness is more than $300,000. To this must now be added the cost and expenses of the receivership. Moreover, the receiver has been operating at a loss, and the debtor concedes that it also will for a time operate at a loss, its most optimistic undertaking being, if the property is restored to it, to reduce current losses 25%. When these figures are considered together with the vagueness of detail in the proposed plan, the doubt that exists as to whether under *77 (b) there may now be a reopening of the adjudication of the claims against the debtor in the equity proceeding, it seems clear to us that the proposed plan is not a workable plan, offers no reasonable prospect for successful rehabilitation of the debtor, and is in consequence not, in the sense the phrase is used in the section, presented in good faith.

Having concluded that the plan fails to meet the statutory test, it may appear that discussion should end here with mandate for affirmance of the decree, and that upon familiar principles no holding as to constitutionality of the assailed sub-section is required. As was said by the Supreme Court in **Howat** v. **Kansas,** 258 U. S. 181, 184, "Obviously we should not pass upon the constitutional validity of an act . . . unless the case before us requires it," and in **Euclid** v. **Ambler Co.,** 272 U. S. 365, 397, "In the realm of constitutional law, especially, this court has perceived the embarrassment which is

likely to result from an attempt to formulate rules or decide questions beyond the necessities of the immediate issue." With profound deference to the canons of self-restraint to which courts subordinate their high power to inquire into the constitutional validity of acts of Congress, we have carefully explored the possibility of avoiding the constitutional question here presented. We are confronted with difficulty.

Faced with attack upon the feasibility of its plan of reorganization, the debtor has repeatedly presented alternatives and modifications. This is its right, not only by virtue of the liberal spirit of the statute, but by the express language of sub-section (f) (7), which provides that before or after a plan is confirmed changes and modifications may be proposed therein by any party in interest. The debtor having finally received approval of the court upon the good faith of its latest plan, proceeded no further in its efforts to comply with the statutory requirement in that respect. Were we now to rest decision solely upon lack of good faith, it would seem appropriate to permit further proposals, for the debtor, having been misled by the court, should not be precluded from further effort to meet statutory requirements. Moreover, we see no legal impediment to submission by the debtor, or at least by a group of friendly creditors, of an entirely new plan of reorganization not heretofore considered and adjudicated. In either event the constitutional question would remain open for ultimate decision upon perhaps no better presentation than at present, and the submission of amendments to more fully demonstrate good faith, purely academic and fruitless. In the meanwhile the property of the debtor, and the security of the lien holders, will be further depleted by operating losses of the receiver. We see no escape therefore from present decision upon the validity of sub-section (b) (5).

The constitutionality of 77 (b) in its general scope and application is not here assailed, and in view of the decision in **Continental Bank** v. **Rock Island Railway, supra,** is perhaps not open to successful assault. That case, however, goes no farther in its consideration of the due process clause of the Fifth Amendment than to hold that statutory provisions permitting delay in the enforcement of contracts affect only the remedy, and deals with a statute which does not permit adjustments of liens without lien holders' consent. Such delay in the application of remedies impairs no vested right, and this was also the rationale of the decision in **Home Building & Loan Association** v. **Blaisdell,** 290 U. S. 398, in consideration of the due process clause of the Fourteenth Amendment.

We are here concerned only with the validity of a clause which provides for adjustment of debts without the consent of creditors. It has long been settled that provisions in bankruptcy statutes authorizing compositions have never been held to invalidate them. This is because a composition is a matter of agreement between the bankrupt and his creditors as a class, with the will of the majority imposed upon the minority. **In re Lane,** 125 Fed. 772, 773; **Cumberland Glass Co.** v. **DeWitt,** 237 U. S. 447, 452.

We confine ourselves to the provisions of sub-section (b) (5), which outline a method for adjustment of claims of non-assenting creditors, and inquire as to their validity in the light of the due process clause. Upon this issue we view the decision of the Supreme Court in **Louisville Bank** v. **Radford,** 295 U. S. 555, controlling. Here, under Tennessee law, as there under Kentucky law, the lien holders had the right under their contract to retain the lien until the indebtedness secured was paid, the right to realize upon the security by a judicial public sale, the right to determine when such sale should be held, subject only to the discretion of the court, the right to protect their interest in the property by bidding at such sale, the right to have the mortgaged property devoted primarily to the satisfaction of the debt; and the right to control the property meanwhile during the period of default, subject only to the discretion of the court, and to have the rents and profits during such period applied to the satisfaction of the debt. These rights are substantive property rights, and any invasion of them under the authority of the present statute is as clearly violative of the due process clause of the Fifth Amendment as it was in the Radford case. We have no occasion to renew our excursion into the history of bankruptcy legislation, or to again undertake that realistic approach to the problem that we ventured upon in the Radford case when it was considered by us (74 Fed. [2d]576). That manner of approach was rejected by the Supreme Court as an aid to solution, and so must we now reject it when it is again urged upon us.

We hold sub-section (b) (5) of ✻ 77 (b) of the Bankruptcy Act unconstitutional and invalid in the respects indicated Stripped of invalidity the section is still an operable statute, and as to validity in its general scope and application there is no occasion for comment other than has been indicated.

The decree below is affirmed.

ALLEN, Circuit Judge, concurring. I concur in the conclusion and in that part of the decision which relates to the

unconstitutionality of the statute. The decision in **Louisville Joint Stock Land Bank** v. **Radford,** 295 U. S. 555, compels this result. I dissent, however, from that part of the opinion which defines "good faith" as requiring feasibility of the plan proposed. Congress, in enacting the statute, required simply that the District Judge should be satisfied of "good faith." In so doing, it doubtless bore in mind the fact that in innumerable cases covering every kind of legal situation, the courts of this country, from the highest to the lowest, have defined good faith as meaning honesty of purpose. It is an unfortunate circumstance that integrity and business acumen are not always united. In this statute the Congress required integrity, and the District Judge correctly found that good faith was shown in the submission of this plan.

Clerk's Certificate of the United States Circuit Court of Appeals, Sixth Circuit

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

I, J. W. MENZIES, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of transcript of record and proceedings in the case of Tennessee Publishing Company versus American National Bank, et al., No. 7266, as the same remains upon the files and records of said United States Circuit Court of Appeals for the Sixth Circuit, and of the whole thereof.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of said Court at the City of Cincinnati, Ohio, this 29th day of April, A.D., 1936.

J. W. MENZIES,
Clerk of the United States Circuit
Court of Appeals, Sixth Circuit.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 18, 1936

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.